

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION
WRIT PETITION (C) NO. **277** OF 2017

IN THE MATTER OF:

S.G. Vombatkere & Anr.

..Petitioner

Versus

Union of India & Ors.

...Respondents

WITH

I.A. of 2017:

AN APPLICATION FOR INTERIM RELIEF

PAPER BOOK

(FOR INDEX : PLEASE SEE INSIDE)

ADVOCATES FOR THE PETITIONER: M/S. K.J. JOHN & CO.

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A1

PROFORMA FOR FIRST LISTING

SECTION – PIL

The case pertains to (Please tick/ check the correct box)

<input type="checkbox"/>	Central Act: (Title)	PIL
<input type="checkbox"/>	Section :	PIL
<input type="checkbox"/>	Central Rule : (Title)	
<input type="checkbox"/>	Rule No(s).:	
<input type="checkbox"/>	State Act: (Title)	
<input type="checkbox"/>	Section:	
<input type="checkbox"/>	State Rule: (Title)	N.A.
<input type="checkbox"/>	Rule No(s).:	N.A.
<input type="checkbox"/>	Impugned Interim Order: (Date)	N.A.
<input type="checkbox"/>	Impugned Final Order/Decree : (Date)	N.A.
<input type="checkbox"/>	High Court: (Name)	N.A.
<input type="checkbox"/>	Names of Judges:	N.A.
<input type="checkbox"/>	Tribunal/ Authority : (Name)	N.A.

-
1. Nature of matter: ☒ Civil ☐ Criminal
2. (a) Petitioner/ Appellant No.1 Mr. S.G.Vombatkere & Anr.
- (b) e-mail ID: N.A.
- (c) Mobile phone number: N.A.
3. (a) Respondent No.1: Union of India & Ors.
- (b) e-mail ID: N.A.
- (c) Mobile phone number: N.A.

4. (a) Main category classification: 08 Letter Petition & PIL Matters

(b) Sub classification: 0812 others

5. Not to be listed before: N.A.

6. Similar /Pending matter: N.A.

7. Criminal Matters: N.A.

(a) Whether accused/ convict has surrendered:

☐
☐

(b) FIR No. N.A. Date: N.A.

(c) Police Station: N.A.

(d) Sentence Awarded: N.A.

(e) Sentence Undergone: N.A.

8. Land Acquisition Matters:

(a) Date of Section 4 notification: N.A.

(b) Date of Section 6 notification : N.A.

(c) Date of Section 17 notification: N.A.

9. Tax Matters: State the tax effect: N.A.

10. Special Category (first petitioner/Appellant only): N.A.

☐ Senior Citizen > 65 years ☐ SC/ST ☐ Woman/child ☐ Legal Aid Case
☐ In custody

11. Vehicle Number (in case of Motor Accident Claim matters): N.A.

12. Decided cases with citation: N.A.

Dated:

AOR for Petitioners
 Name: **M/s. K.J.JOHN & CO.,**
 Registration No.1287
 E-mail: mail@kjjohnco.in

SYNOPSIS

The present writ petition under Article 32 of the Constitution of India is being filed in public interest raising various issues including among others, protection of fundamental rights under Article 14, 19 and 21 of the Constitution of India. The core challenge is the violation of basic human rights of the citizens of this country as a result of the unique identification project (UID Project) which has been made mandatory for the purpose of filing income tax returns and holding a Permanent Account Number ('PAN') in terms of the impugned provision, i.e. Section 139AA of the Income Tax, 1961 (as introduced by the Finance Act, 2017).

By the impugned provision, an Aadhaar Number has been made mandatory for (a) obtaining a PAN; (b) continued validity of a person's PAN; and (c) filing one's return of income under the Income Tax Act. Filing returns of income and possessing a valid PAN are mandatory obligations under Sections 139 and 139A of the Income Tax Act respectively. Non-compliance with these provisions entails penal consequence under Sections 271 and 272B of the Income Tax Act respectively. Pursuant to the impugned provision, every person is compelled to possess an Aadhaar Number to comply with these mandatory obligations for payment of income tax or otherwise suffer penal consequences.

The impugned provision when examined in the context of the Aadhaar Act, ought to be tested for what it is: a statutory provision that seeks to extend and spread the use of Aadhaar identification

and make it pervasive. The stated object of the respondents for several years even prior to the enactment of the Aadhaar Act, was to replace multiple identification systems currently in vogue and available to the citizenry, with a single ubiquitous identification mechanism that is the Aadhaar number.

The Petitioners submit that this objective of creating a single pervasive identification over time is itself illegal. There are several facets to the illegality and amongst them is the very negation of an individual citizen's freedom to identify through different means. The State cannot compel identification in one manner alone and make the discharge of legal obligations conditional upon the use of such method of identification.

The impugned provision is excessive and disproportionate inasmuch as it makes compliance of mandatory legal obligations under the Income Tax Act conditional upon an individual enabling invasion of its bodily and personal integrity. The Petitioners submit that there are numerous less invasive and less disruptive methods of verifying the identity of tax payers and ensuring tax collection. The PAN is one such method. In enacting the impugned provision, the legislature has failed to identify the reasons which made it necessary to link a person's PAN to his or her Aadhaar number and why the PAN was suddenly considered inadequate as a sole tool to monitor the payment and collection of income tax.

At the outset, it is submitted that the Union of India lacks the legislative competence to pass the impugned provision inasmuch as

no entry in List I or List III of Schedule VII of the Constitution of India empowers it to pass the impugned provision. The legislative competence of the Central Government to impose taxes on income under Entry 82 of List I does not extend to enacting the impugned provision.

It is submitted that the impugned provision is unconstitutional for the following primary grounds: -

1. IMPUGNED PROVISION VIOLATES ARTICLE 14 OF THE CONSTITUTION OF INDIA INASMUCH AS IT CREATES AN UNINTELLIGIBLE DIFFERENTIAL WITHOUT ANY NEXUS TO THE OBJECT OF COLLECTION OF TAX FROM INCOME.

The State should ensure unhindered compliance of a person's obligation to pay income tax. Whether or not an individual is willing to part with his or her core biometric information is completely irrelevant to the discharge of this legal obligation which is based on an objective criterion of the income earned by a person. The impugned provision violates Article 14 of the Constitution of India and is palpably arbitrary and illegal inasmuch as it creates an artificial impermissible classification between those persons who have parted with biometrics and those who have not parted with biometrics for the purpose of payment and collection of income tax. Differently put, the impugned provision creates an artificial distinction between those persons who hold an Aadhaar number and those who do not with the latter group being under the threat of penal consequences under the Income Tax Act, given that non-

possession of an Aadhaar number will not be a defence for non-compliance of mandatory provisions of the Income Tax Act.

The object of the Income Tax Act is to levy a tax on the income earned by a person and to provide a mechanism for the payment and collection of this tax. The parting of biometrics and/or possessing an Aadhaar number has no rational nexus to the requirement of payment of tax under the Income Tax Act and/or the efficient collection thereof. The impugned provision is clearly violative of Article 14 of the Constitution of India inasmuch as it creates a wrongful classification amongst a homogeneous group of taxpayers and this artificial classification also has no rational nexus to the objects of the Income Tax Act.

2. IMPUGNED PROVISION IS CONTRARY TO THE CONCEPT OF 'LIMITED GOVERNMENT'

The Constitution of India like other constitutions that set out the basic law for democratic governance, employs an array of checks and balances to ensure open, accountable government where each wing of the government performs its actions for the benefit of the people and within its sphere of responsibility. The checks and balances are many and amongst them are the respective roles assigned by the Constitution to the legislature, the executive and the judiciary. Under India's federal structure, with a distribution of legislative authority between the Union government and the States, the fields of legislation and corresponding executive authority are also distributed between the Union and the States. Provisions in the

Constitution such as the fundamental rights chapter (Part III) and the chapter relating to inter-state trade (Part XIII) also circumscribe the authority of the State. These limitations on the power of the State support the notion of 'limited government'. In this sense, the expression 'limited government' would mean that each wing of government is restricted by provisions of the Constitution and other laws and is required to operate within its legitimate sphere. Exceeding these limits would render the action of the State *ultra vires* the Constitution or a particular law.

The concept of 'limited government' may also be understood in a much broader and different sense. This notion of a limited government is *qua* the citizenry as a whole. There are certain things that the State simply cannot do, because the action fundamentally alters the relationship between the citizen and the State. The wholesale collection of biometric data including finger prints and storing it at a central depository *per se* puts the State in an extremely dominant position in relation to the individual citizen. Biometric data belongs to the concerned individual and the State cannot collect or retain it to be used against the individual or to his or her prejudice in the future. Further the State cannot put itself in a position where it can track an individual and engage in surveillance. The State cannot deprive or withhold the enjoyment of rights and entitlements by an individual or make such entitlements conditional on a citizen parting with her biometrics.

It is the people of India who declared in the Preamble: -

'We the people of India. . . In our Constituent Assembly this twenty-sixth day of November, 1949, do hereby adopt, enact and give to ourselves this Constitution'.

The Constitution of India is a compact between the people of India and the State. The essence of this compact as evident from the Preamble to the Constitution is that Indian society and the Indian nation would foster justice, liberty, equality and fraternity in the widest sense. The notion of limited government here would mean that every individual citizen and the citizenry collectively are entitled to live, work, and enjoy their varied lives without being under the continuous gaze of the State. Citizens of India enjoy a full and rich raft of rights against the State which are drawn from the common law, statutes, the Constitution and a higher order in the form of the 'basic structure of the Constitution'.

The object of the Income Tax Act is to levy a tax on the income earned by a person and to provide a mechanism for the payment and collection of this tax. Compelling an individual to part with his/her biometrics and/or possess an Aadhaar number for the purpose of complying with the obligation under the Income Tax Act, seeks to shift this balance of control between the State and the individual.

3. THE IMPUGNED PROVISION COERCES INDIVIDUALS TO PART WITH THEIR PERSONAL INFORMATION.

At a minimum, free consent would mean that a proposed enrollee is informed that the issuance of an Aadhaar number is voluntary and no person can suffer any adverse consequence by not enrolling for

an Aadhaar number. The impugned provision completely effaces this concept of free consent. There can be no question of free consent in a situation where an individual is being coerced to part with its biometric information under the threat of penal consequences.

An individual's biometrics such as finger prints and iris scan are the property and entitlement of that individual and the State cannot coerce an individual or direct him or her to part with biometrics under the threat of penal consequences. Every citizen has a basic right to informational self-determination and the state cannot exercise dominion over a citizen's proprietary information either in individual cases or collectively so as to place itself in a position where it can aggregate information and create detailed profiles of individuals or facilitate this process. The Constitution of India is not a charter for a Police State which permits the State to maintain cradle to grave records of the citizenry.

No democratic country in the world has devised a system similar to Aadhaar which operates like an electronic leash to tether every citizen from cradle to grave.

4. THE IMPUGNED PROVISION SEEKS TO RELY ON A FLAWED SYSTEM, WHICH RESULTS IN EXCLUSION RATHER THAN INCLUSION OF INDIVIDUALS.

It is submitted that biometrics as a technology is unreliable and as applied by the Respondents is serving as an instrument of exclusion depriving persons who are otherwise entitled to financial and other

subsidies, benefits and services from receiving these entitlements. Going by the stand of UIDAI itself, the number of cases where de-duplication resulted in the rejection of an application for an Aadhaar number is to the tune of 9 crores out of around 100 crore enrolments. The number 9 crores is just a little less than the population of the State of Bihar and twice the population of Odisha (as per the 2011 census). This shows that every 10th person is not being issued an Aadhaar number (though applied for) because of the flawed biometric technology being used. Further, one study using official data shows that the proportion of "false positives" i.e. duplicates being shown erroneously is unacceptably high, resulting in exclusion of those entitled to benefits. This study suggests that 1/121 is the proportion of false positives by a conservative estimate. This ratio is strongly indicative of the programme excluding individuals who should otherwise receive their entitlements.

The accuracy of biometrics is highly doubtful for a variety of reasons: A person's biometrics change over time; for persons who are engaged in manual labour and also persons who are aged, etc. ridges on the fingers smoothen out and cannot be captured effectively by biometric devices; and there is no safeguard at the crucial point of capturing the biometric that ensures the integrity of the process at the stage of enrolment.

In this backdrop, when there are other suitable and less intrusive means to verify an individual's income, there is no legal or factual

justification for the Respondents to make Aadhaar number mandatory for filing of returns and possessing a PAN card.

5. **THE IMPUGNED PROVISION CREATES AN ENVIRONMENT WHICH CAN BE USED FOR SURVEILLANCE.**

The impugned provision mandatorily requires every individual who wants to file an income tax return to possess an Aadhaar number.

The Aadhaar programme is designed to facilitate and encourage private sector operators to create applications that depend upon the Aadhaar data base for the purposes of authentication/verification. This would mean that non-governmental, private sector entities such as banks, employers, any point of payment, taxi services, airlines, colleges, schools, movie theatres, clubs, service providers, travel companies, etc. will all utilise the Aadhaar data base and may also insist upon an Aadhaar number or Aadhaar authentication. This would mean that at every stage in an individual's daily activity his or her presence could be traced to a location in real time.

One of the purposes of Aadhaar as projected by the Respondents is that it will be a single point verification for KYC (Know Your Customer). This is permissible and indeed contemplated by the Aadhar Act. Given the very poor quality of scrutiny of documents by private enrollers and enrolment agencies (without any governmental supervision) means that the more rigorous KYC process at present being employed by banks and other financial institutions will yield to a system which depends on a much weaker data base. This would

eventually imperil the integrity of the financial system and also threaten the economic sovereignty of the nation.

One of the dangers of centralized data bases that are connected to the internet is that the information stored on these computers can be hacked and illegally accessed so as to steal the information. Identity theft enables third parties to utilize biometric and demographic information stolen and enables these parties to electronically impersonate persons while accessing data that is most sensitive or important for an individual.

Even assuming that the biometrics such as the finger print is unique, the nature of human and societal interactions is such that individuals leave traces of their finger prints on several media in the course of a day. These finger prints can be easily lifted and misused for identity theft. This is quite apart from the Respondents themselves or some agencies of government misusing core biometrics and planting these biometrics to create a false presence or false interactions by an individual. This type of impersonation is facilitated by the Aadhar Act rendering it patently unconstitutional.

The Aadhaar number does not serve as an identity as incorrectly projected by the Respondents but serves as a method of identification. Every citizen-state and citizen-service provider interaction requiring identification is sought to be captured and retained by the government at a central base and a whole ecology developed that would require reference to this central data base on multiple occasions in course of the day. In other words, the Aadhar

Act impermissibly creates the foundation for real time, continuous and pervasive identification of citizens in breach of the freedoms guaranteed under the Constitution.

In the above facts and circumstances, the Petitioners are constrained to file the present writ petition under Article 32 of the Constitution of India, challenging the impugned provision as being *ultra vires* the Constitution of India.

LIST OF DATES

- | | |
|------------|---|
| 28.01.2009 | The Union of India through the Planning Commission issued a Notification dated 28.01.2009, constituted the Unique Identification Authority of India (UIDAI) for the purpose of implementing of Unique Identity (UID) scheme wherein a UID data base was to be collected from the residents of India. Notably, there was no mention of collection of biometric information in the said notification. Furthermore the notification did not provide any checks and balance with regard to the collection, storage, usage of the said information collected pursuant to the UID scheme. |
| 03.12.2010 | Although the programme was launched in September 2010, there was no statutory backing for the same. On 03.12.2010, the Union of India |

introduced the National Identification Authority of India Bill 2010 (NIA Bill) in Parliament. The NIA Bill was almost identical in pith and substance to the Aadhaar Act, 2016.

13.12.2011

Notably, the said NIA Bill was referred to the Parliamentary Standing Committee on Finance. The Standing Committee gave its report on 13.12.2011, wherein it found several fallacies/lacunas in the NIA Bill. Certain specific objections raised by the standing committee pertained to:

- (i) Privacy issues,
- (ii) Protection of the sensitive biometric information,
- (iii) Private parties' involvement in the collection of the biometric information
- (iv) Lack of appropriate technology in India to sustain such a project
- (v) Possibility of fake Aadhaar numbers being generated due to the inadequate verification system under the UID scheme.

NIL

In spite of the Standing Committee Report, the Government of India failed to correct/cure defects in the UID scheme.

Since the NIA Bill never got passed, the UID scheme continued to operate without any statutory basis or backing.

In an absolutely unscrupulous manner the government/UIDAI continued to collect private biometric information from the citizens under the UID scheme.

Interestingly, there was absolutely no consent, let alone free and informed consent taken from the individuals who were made to part with their private information. Neither was there any information in the application/enrolment forms regarding the potential use of the said biometric information by the government, nor was there any general public awareness programme carried out by the government to explain the UID programme to the citizens.

The collection/enrolment centres were being run by private parties. There was absolutely no government presence in any of the enrolment centres. There were no Government personnel present in these centres where the individuals were made to give up their private biometric information. Furthermore the collecting agencies were also not government authorities. In fact

they were agencies who were contractually related to the UIDAI. Therefore the entire UID programme was being conducted and carried out by private authorities with absolutely no government involvement. The entire UID programme was carried out on the basis of numerous MoUs between UIDAI and the concerned authority.

30.11.2012 Aggrieved by such blatant violation of fundamental rights of the citizens of India, a spate of PILs were filed before this Hon'ble Court. The lead petition before this Hon'ble Court was *Justice K. S. Puttaswamy (Retd) v. Union of India & Ors.*, W.P. (C) No.494/2012. This Hon'ble Court vide Order dated 30.11.2012 issued notice in the said petition.

23.9.2013 The present Petitioners No. 1 and 2 had also filed a PIL titled *S. G. Vombatkere & Anr. v. Union of India & Ors.*, W.P. (C) No. 829/2013. This Hon'ble Court vide order dated 23.09.2013 issued notice in the writ petition, and tagged it along with Writ Petition No. 494/2012.

Further, this Hon'ble Court on being apprised of the unconstitutional nature of the UID scheme

and the gross abuse by the government in refusing essential benefits /services to the citizens if they did not possess and Aadhaar Card, passed an Interim Order dated 23.09.2013 where it was held that Aadhaar card should not be made mandatory for providing governmental benefits.

NIL

In spite of the express direction by this Hon'ble Court to not make the use of Aadhaar card as a mandatory requirement, various government authorities, both Central and State, continued to insist upon Aadhaar card as a mandatory condition for providing governmental benefits.

26.11.2013

This Hon'ble Court on being apprised of the continuing violations by the governmental authorities passed another interim order dated 26.11.2013, reiterating its earlier interim order and also impleaded all States and Union territories for effective implementation/enforcement of this Hon'ble Courts interim directions.

24.03.2014

Interestingly, the UIDAI, themselves filed a Special Leave Petition, viz. SLP (Crl) No.2524 of 2014, challenging an order passed by the Bombay High Court requiring them to provide biometric

information to CBI for investigation purpose with respect to a criminal trial. This Hon'ble Court vide Order dated 24.03.2014 issued notice in the said SLP and restrained the UIDAI from transferring any biometrics information to any agency without the written consent of the concerned individual. It was further reiterated that Aadhaar should not be made mandatory for availing any service.

11.08.2015 The aforesaid batch of the writ petitions came up for hearing before a Bench of 3 judges of this Hon'ble Court, wherein vide Order dated 11.08.2015 the petitions were referred to a Constitution Bench. However, this Hon'ble Court passed an interim order directing that *"the production of an Aadhaar Card will not be condition for obtaining any benefits otherwise due to a citizen"*.

15.10.2015 Subsequently, a Constitution Bench of this Hon'ble Court passed an Interim Order dated 15.10.2015 and held that,

"5. We will also make it clear that the Aadhaar card scheme is purely voluntary and it cannot be made mandatory till the matter is finally decided by this Court one way or the other."

It is pertinent to point out that in spite of the repeated directions passed by this Hon'ble Court to not make Aadhaar card mandatory for availing benefits of any type, various authorities from time to time have continued to flout and disobey the directions of this Hon'ble Court.

16.3.2016

In the above backdrop, the Union of India, introduced the Aadhaar (Targetted Delivery of Financial and other subsidies, benefits and services) Act, 2016 (the 'Aadhaar Act') as a Money Bill in the Budget Session, 2016 in the Lok Sabha. Even though the Aadhaar Act was in pith and substance identical to the earlier NIA Bill, 2009 and sought to create the UIDAI authority, in order to qualify it as a Money Bill, the objects and purpose was stated be in relation to expenditures arising out of the Consolidated Fund of India. Notably, under section 57 of the Aadhaar Act, the said UID data base shall be available to any private and non governmental authorities to use the same for verification/authentication.

However, in spite of strong objections from the Opposition with regard to the Aadhaar Act being introduced as a Money Bill, the same came to be passed on 16.3.2016.

- 26.3.2016 The Aadhar Act received Presidential assent and was published in the official gazette on 26.3.2016.
- 12.7.2016 The Union of India vide Notification dated 12.7.2016 issued under Section 11 of the Aadhaar Act, established the 3rd Respondent.
- 28.10.2016 Aggrieved by the Aadhaar Act, the present Petitioners No. 1 and 2 filed a PIL titled *S. G. Vombatkere & Anr. v. Union of India & Ors.*, W.P. (C) No. 797/2016, challenging the Aadhaar Act before this Court. This Court vide Order dated 26.10.2016 issued *rule nisi* in the said writ petitions and tagged it with the earlier pending Writ Petitions.
- 31.3.2017 The Union of India by way of the Finance Act, 2017, introduced the impugned provision, i.e. Section 139AA in the Income Tax Act, 1961. By virtue of the impugned provision, it is now mandatory to present an Aadhaar number for the following: - (a) obtaining a permanent account number ("PAN"); (b) continued validity of a person's PAN; and (c) filing one's return of income under the Income Tax Act. The Finance Act, 2017 received the Presidential Assent on

31.3.2017, and was published in the official gazette on the same day.

.04.2017

Hence, the present writ petition is being filed under Article 32 of the Constitution of India as a public interest litigation seeking a writ of mandamus directing that the impugned provision is *ultra vires* the Constitution of India and is void and illegal.

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION
WRIT PETITION (CIVIL) NO. OF 2017
(UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA)

IN THE MATTER OF :

1. S. G. Vombatkere, Indian inhabitant
 having his address at 475, 7th Main
 Road, Vijay Nagar 1st Stage, Mysore,
 Karnataka -570 017.
2. Bezwada Wilson C/o Safai Karmachari
 Andolan, 36/13, Ground Floor, East Patel
 Nagar, New Delhi -110008.

...Petitioners

Versus

1. Union of India, through the Secretary,
 Ministry of Finance, North Block, New
 Delhi-110001.
2. Central Board of Direct Taxes under the
 Ministry of Finance
3. Unique Identification Authority of India a
 statutory authority established under the
 Aadhaar (Targeted Delivery of Financial
 and Other Subsidies, Benefits and
 Services) Act, 2016 having its address at
 3rd Floor, Tower-II, Jeevan Bharati
 Building, Connaught Circus, New Delhi-
 110001.

... Respondents

**WRIT PETITION UNDER ARTICLE 32 OF
 THE CONSTITUTION OF INDIA**

TO

THE HON'BLE THE CHIEF JUSTICE OF
 INDIA AND HIS OTHER COMPANION
 JUSTICES OF THE HON'BLE THE SUPREME
 COURT OF INDIA.

THE HUMBLE PETITION OF THE
 PETITIONERS ABOVENAMED

MOST RESPECTFULLY SHOWETH:

A. Parties

The Petitioners

1 (a). The 1st Petitioner, a citizen of India, is aged about 74 years.

The 1st Petitioner is a retired Indian Army officer and is engaged in voluntary social work. In so far as the Unique Identification Project ("UID project") is concerned, the 1st Petitioner has published several articles expressing concerns over privacy and security risks. The Petitioner No. 1 possesses a PAN card, bearing number ABMPV3365Q. He has been regularly filing his income tax returns. A resume of the 1st Petitioner's professional work and a copy of the article is annexed hereto and marked as **ANNEXURE - P/1 (COLLY) -**

(PAGES 42 TO 46)

1(b). The 2nd Petitioner is a citizen of India and is also engaged in voluntary social work. He is one of the founders and the National Convenor of the Safai Karmachari Andolan, a human rights organization that has been campaigning for the eradication of manual scavenging and the emancipation of people employed for the purposes of manual scavenging. He was also the convenor of the sub-group on safai karamcharis constituted by the Planning Commission of India. In 2009, he was chosen as the "Ashoka Senior Fellow" of human rights. By virtue of being the founder of Safai Karmachari Andolan, he was also actively involved in a public interest litigation before

this Hon'ble Court in Writ Petition (Civil) No. 583 of 2003, *Safai Karamchari Andolan and Ors v. Union of India & Ors*. The subject matter of that petition is strict implementation of the Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993.

The Petitioner No. 2 possesses a PAN card, bearing number AGMPB6495N. He has been regularly filing his income tax returns.

1(c) The Petitioners No. 1 and 2 herein have filed Civil Writ Petition No. 829 of 2013 (*S.G.Vombatkere & Anr. v. Union of India & Ors*) relating to the Aadhaar project before enactment of the Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016. Writ Petition No.829 of 2013 is pending before a Constitution Bench of this Hon'ble Court and several interim orders have been passed in that case.

1(d) Thereafter, the Petitioners No. 1 and 2 herein have filed Civil Writ Petition No. 797/2016 (*S.G.Vombatkere & Anr. v. Union of India & Ors*) challenging the constitutional vires of the Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016. This writ petition is tagged along with the earlier batch of the writ petitions, and is pending before a Constitution Bench of this Hon'ble Court.

1(e). The Petitioner Nos. 1 to 4 do not have an Aadhaar number.

The Respondents

- 2(a). The 1st Respondent is the Union of India.
- 2(b) The 2nd Respondent is the Central Board for Direct Taxes (CBDT).
- 2(c) The 3rd Respondent is the Unique Identification Authority of India (UIDAI), a statutory authority established under Section 11 of the Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016 (hereinafter, 'the Aadhar Act'). It was initially established under an executive notification dated 28.01.2009 and thereafter brought under the 2016 statute.
3. The Respondents are amenable to the writ jurisdiction of this Hon'ble Court under Article 32 of the Constitution of India. The Respondents are "State" within the meaning of Article 12 of the Constitution of India.

B. Related matters pending before Constitution Bench

4. The Petitioners No. 1 and 2 herein had earlier filed a writ petition being Civil Writ Petition No. 829 of 2013 (*S.G. Vombatkere & Anr v. Union of India & Ors*) challenging the Aadhaar project as being unconstitutional on diverse grounds. This petition together with other connected cases is pending before a Constitution Bench of this Hon'ble Court. A copy of the order dated 11.8.2015 referring the previous petition together with other connected cases to a Constitution Bench is annexed hereto and marked as **ANNEXURE - P/2 -**
(PAGES 47 TO 49). The Constitution Bench has

passed an interim order on 15.10.2015 a copy whereof is hereto annexed and marked as **ANNEXURE - P/3 - (PAGES ~~50~~ TO ~~51~~)**.

5. Extensive documents concerning the Aadhaar project have already been filed by the Petitioners No. 1 and 2 in their previous petitions, viz. WP No. 829/2013 and WP No. 797/2016, and are part of the record of this Court. The Petitioners crave leave to refer to and rely upon the pleadings, annexures and record in the previous writ petitions. 'Convenience compilations' of documents have been prepared for the benefit of the Court in the previous cases. In the circumstances, so as to save paper and not needlessly burden the record, the Petitioners are advised not to file further sets of documents with this petition at this stage, but will do so if directed by this Hon'ble Court.
6. The present writ petition may be treated as complementary to the previous writ petition and the averments, grounds and submissions set out in the previous writ petition may be treated as being part of this writ petition. This request is made in the interest of brevity and since the challenge in this writ petition builds upon grounds set out in the previous writ petition.

C. Public Interest Litigation

- 7(a). This petition is filed as a public interest litigation. Apart from the general public interest, the Petitioners themselves are

personally affected by the impugned provision as taxpayers.

The impugned provision, Section 139AA of the Income Tax Act, 1961 (as introduced by the Finance Act, 2017) unless set aside as being *ultra vires* the Constitution of India, will adversely affect and harm citizens across the country, individually and collectively. The Petitioners approach this Hon'ble Court *bona fide* to prevent the violation of basic human rights that have already occurred as a result of the UID project and which violations will escalate in the future, *inter alia*, pursuant to the impugned provision unless checked by this Hon'ble Court. Unless the relief sought is granted, a further loss of thousands of crores of rupees in addition to the funds already wasted will continue to be caused to the public exchequer.

- 7(b). The Petitioners have not filed any other petition challenging the impugned provision..

D. The Challenge and some of the Issues Involved

8. This petition challenges Section 139AA of the Income Tax Act, 1961 (as introduced by Section 56 of the Finance Act, 2017) (the impugned provision) inasmuch as it violates and threatens to violate the fundamental rights of the Petitioners and other citizens of India. The impugned provision, in particular, violates the fundamental rights guaranteed under Articles 14, 19 and 21 of the Constitution of India.
9. The Petitioners, *inter alia*, seek appropriate declarations to the effect that the impugned provision is *ultra vires* the Constitution

of India. The Petitioners seek appropriate declarations regarding their fundamental right to informational self-determination being a facet of Article 21 of the Constitution.

10. The impugned provision was introduced by way of the Finance Act, 2017, which was published in the Gazette of India on 31.3.2017 and brought into force on 1.4.2017. A copy of the Finance Act, 2017 as published in the ois annexed and marked as **ANNEXURE - P/4 - (PAGES 52 TO** .

E. Brief Facts

11. The Union of India through the Planning Commission issued a Notification dated 28.01.2009, constituting the Unique Identification Authority of India (UIDAI) Act for the purpose of implementing of Unique Identity (UID) scheme wherein a UID data base was to be collected from the residents of India. Notably, there was no mention of collection of biometric information in the said notification. Furthermore the notification did not provide any checks and balance with regard to the collection, storage, usage of the said information collected pursuant to the UID scheme.
12. Pursuant to the said Notification the Government of India appointed Shri Nandan Nilekani as the Chairman of the UIDAI on 02.07.2009. The UID scheme contemplated that an Aadhaar number which is random 12 digit number which is unique to all residents of India, be issued to the applicant. This Aadhaar

number was generated after collecting the biometric information i.e. finger prints and iris scan, along with demographic information about the individual.

13. The scheme was launched in September, 2010 in the rural areas of Maharashtra. Thereafter it has extended all over India. Approximately, 100 crore individuals have been enrolled under the UID scheme till date. Although Aadhaar was supposed to be voluntary, the government has carried out a concerted and sustained campaign to make the enrolment into the UID scheme virtually mandatory. This was done by various offices across the country insisting upon the Aadhaar number for the purposes of providing a service even where alternative methods of identification were available.
14. When the programme was launched in September, 2010 there was no statutory backing for the same. On 03.12.2010, the Union of India introduced the National Identification Authority of India Bill 2010 (NIA Bill) in Parliament. The NIA Bill was very similar to the Aadhaar Act, 2016.
15. The said NIA Bill was referred to the Parliamentary Standing Committee on Finance. The Standing Committee gave its report on 13.12.2011, wherein it found several fallacies/lacunas in the NIA Bill. Certain specific objections raised by the standing committee pertained to:
 - (i) Privacy issues,
 - (ii) Protection of the sensitive biometric information,

- (iii) Private parties' involvement in the collection of the biometric information,
- (iv) Lack of appropriate technology in India to sustain such a project,
- (v) Possibility of fake Aadhaar numbers being generated due to the inadequate verification system under the UID scheme.

16. In spite of the Standing Committee Report, the Government of India failed to correct/cure defects in the UID scheme. The NIA Bill never got passed, and the UID scheme continued to operate without any statutory basis or backing. Private enrollers continued to collect private biometric and demographic information from the citizens under the UID scheme without any authority in law. No written consent, much less informed consent was taken from the individuals who were made to part with their private information. There is no mention in the application forms specifying the biometrics to be captured. Neither was there any information in the application forms regarding the potential use of the said biometric information by the government, nor was there any general public awareness programme carried out by the government to explain the UID programme to the citizens.

17. The collection/enrolment centres were run by private parties. There was absolutely no government presence in any of the enrolment centres. There were no Government personnel

present in these centres where the individuals were made to part with their personal biometric information. The UID programme was operated on the basis of MoUs of doubtful legality between UIDAI and the registrars.

18. The Respondents do not possess the requisite technology for implementing the core biometric identification system. In fact, under the 2009 Notification regime, the UIDAI had entered into arrangements with three consortia, to implement the core biometric identification system in support of the Aadhaar project. These consortias were entrusted with the task of designing, supplying, commissioning, maintaining and supporting the Biometric Identification System. The leaders of these three consortias are:- (i) Accenture; (ii) Mahindra Satyam & Morpho joint venture, and (iii) L1-Identity Solutions.

L1 Identity Solutions is a large American Defence Contractor based in Connecticut, specializing in biometric technology system. Several of its officers and directors have served with the Central Intelligence Agency (CIA) and other American Defence organisation. The former director of CIA, Mr. George Tenet, is on the Board of Directors of L1 Identity Solutions. L1 Identity Solutions has various contractual relationships with US Department of Defence and other intelligence agencies. This is relevant to note, inasmuch as the biometric information of an Indian resident/citizen can be easily transmitted to foreign government, thereby potentially impacting India's sovereignty,

national security and severely undermine the privacy and autonomy of the individuals.

19. Aggrieved by the violation of fundamental rights of the citizens of India, several of PILs were filed before this Hon'ble Court and in High Courts. The lead petition before this Hon'ble Court was *Justice K. S. Puttaswamy (Retd) v. Union of India & Ors.*, W.P. (C) No.494/2012. This Hon'ble Court vide order dated 30.11.2012 issued notice in the said petition. The Petitioners No. 1 and 2 herein had also filed a PIL titled *S. G. Vombatkere & Anr. v. Union of India & Ors.*, W.P. (C) No. 829/2013. This Hon'ble Court vide order dated 23.09.2013 issued notice in the writ petition, and tagged it along with Writ Petition No. 494/2012.
20. This Hon'ble Court on being apprised of the unconstitutional nature of the UID scheme and the gross abuse by the government in refusing essential benefits /services to the citizens if they did not possess an Aadhaar Card, passed an Interim Order dated 23.09.2013 where it directed that the Aadhaar card should not be made mandatory for providing governmental benefits. True copy of the order dated 23.09.2013 passed by this Hon'ble Court in W.P. (C) No.494/2012 is annexed hereto and marked as **ANNEXURE - P/5 - (PAGES 53 TO 78)**.

21. In spite of the express direction by this Hon'ble Court to not make the use of Aadhaar card as a mandatory requirement, various government authorities, both Central and State, continued to insist upon Aadhaar card as a mandatory condition for providing services and/or benefits.
22. This Hon'ble Court on being apprised of the continuing violations by the governmental authorities passed another interim order dated 26.11.2013, reiterating its earlier interim order and also impleaded all States and Union territories for effective implementation/enforcement of this Hon'ble Courts interim directions. True copy of the order dated 26.11.2013 passed by this Hon'ble Court in W.P. (C) No.494/2012 is annexed hereto and marked as **ANNEXURE - P/6 -**
(PAGES 79 TO 90).
23. The UIDAI, themselves filed a Special Leave Petition, viz. SLP (Crl) No.2524 of 2014, challenging an order passed by the Bombay High Court requiring them to provide biometric information to CBI for investigation purpose with respect to a criminal trial. This Hon'ble Court vide order dated 24.03.2014 issued notice in the said SLP and restrained the UIDAI from transferring any biometrics information to any agency without the written consent of the concerned individual. It was further reiterated that Aadhaar should not be made mandatory for availing any service. True copy of the order dated 24.03.2014 passed by this Hon'ble Court in SLP (Crl.) No.2524/2014 is

annexed hereto and marked as ANNEXURE - P/7 -
(PAGES 91 TO 109).

24. The aforesaid batch of the writ petitions came up for hearing before a Bench of 3 judges of this Hon'ble Court, wherein vide order dated 11.08.2015 the petitions were referred to a Constitution Bench. However, this Hon'ble Court passed an interim order directing that "*The production of an Aadhaar Card will not be condition for obtaining any benefits otherwise due to a citizen*".
25. Subsequently, a Constitution Bench of this Hon'ble Court passed an Interim Order dated 15.10.2015 and held that,

"5. We will also make it clear that the Aadhaar card scheme is purely voluntary and it cannot be made mandatory till the matter is finally decided by this Court one way or the other."
26. In spite of the repeated directions passed by this Hon'ble Court to not make Aadhaar card mandatory for availing benefits of any type, various authorities from time to time have continued to flout and disobey the directions of this Hon'ble Court.
27. Thereafter, the Union of India, passed the Aadhaar Act as a Money Bill in the Budget Session, 2016 in the Lok Sabha. Even though the Aadhaar Act was similar to the earlier NIA Bill, 2009 and sought to create the UIDAI authority, in order to qualify it as a Money Bill, the objects and purpose was stated be in relation to expenditures arising out of the Consolidated Fund of India. Notably, under section 57 of the Aadhaar Act, the said

UID data base shall be available to any private and non governmental authorities to use the same for verification/authentication. Copy of the Aadhaar (Targetted Delivery of Financial and other Subsidies, Benefits and Services) Act, 2016 is is annexed hereto and marked as **ANNEXURE - P/8 - (PAGES 110 TO 201)**.

28. The present Petitioners No. 1 and 2 filed a PIL titled *S. G. Vombatkere & Anr. v. Union of India & Ors.*, W.P. (C) No. 797/2016, challenging the Aadhaar (Targetted Delivery of Financial and other Subsidies, Benefits and Services) Act, 2016 before this Court. This Court vide Order dated 26.10.2016 issued *rule nisi* in the said writ petitions and tagged it with the earlier pending writ petitions.
29. The Union of India by way of the Finance Act, 2017, introduced the impugned provision, i.e. Section 139AA in the Income Tax Act, 1961. The impugned provision was introduced under a money bill (Bill No.12-C of 2017) passed by the Lok Sabha on March 22, 2017. Amendments to the money bill suggested by the Rajya Sabha were thereafter rejected by the Lok Sabha and the Finance Bill, 2017 was passed by the Parliament on March 30, 2017. The Finance Act, 2017 received the Presidential assent on 31.3.2017 and was published in the official gazette on the same day.

By virtue of the impugned provision, it is now mandatory to present an Aadhaar number for the following: - (a) obtaining a

permanent account number ("PAN"); (b) continued validity of a person's PAN; and (c) filing one's return of income under the Income Tax Act. It is pertinent to point out that filing returns of income and possessing a valid PAN are mandatory obligations under Sections 139 and 139A of the Income Tax Act respectively. Non-compliance with these provisions entails penal consequence under Sections 271 and 272B of the Income Tax Act respectively. Pursuant to the impugned provision, every person is compelled to possess an Aadhaar Number to comply with these mandatory obligations for payment of income tax or otherwise suffer penal consequences.

F. GROUNDS

30. The Petitioners submit that Section 139AA of the Income Tax Act, 1961 (the "Income Tax Act"), as introduced by the Finance Act, 2017, is *ultra vires*, illegal, null and void on the following amongst other grounds which are set out hereafter and are without prejudice to one another. The Petitioners have had the opportunity to review the contents of Writ Petition (Civil) No. 829 of 2013 and Writ Petition (Civil) No. 797 of 2016 pending before this Court and the documents in support thereof. Extensive documents concerning the Aadhaar project have already been filed in the aforesaid writ petitions and are part of the record of this Court. The Petitioners crave leave to refer to and rely upon the pleadings, annexures and record in these

writ petitions, which are not being repeated/re-filed in the interest of brevity.

31. The grounds set out below also support the declarations, directions and orders sought for by the Petitioners and each of them, as well, may be treated in the alternative and without prejudice to one another:-

I. By the impugned provision, an Aadhaar Number has been made mandatory for (a) obtaining a permanent account number ("PAN"); (a) continued validity of a person's PAN; and (c) filing one's return of income under the Income Tax Act. Filing returns of income and possessing a valid PAN are mandatory obligations under Sections 139 and 139A of the Income Tax Act respectively. Non-compliance with these provisions entails penal consequence under Sections 271 and 272B of the Income Tax Act respectively. Pursuant to the impugned provision, every person is compelled to possess an Aadhaar Number to comply with these mandatory obligations for payment of income tax or otherwise suffer penal consequences.

II. An Aadhaar Number is a random 12 digit unique number assigned by the UIDAI upon collection of biometric and demographic information from enrollees.

An individual's biometrics, specifically finger prints and

iris scan (which are covered by the definition of 'core biometric information' contained in section 2(j) of the Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016) are the personal property of that individual. The Petitioners submit that biometric information relating to a person is owned by that person alone and no third party specifically the State can force or coerce or compel a person to part with core biometric information save and except in extremely narrow or limited exceptional circumstances such as where a convicted individual is serving time in prison.

It is respectfully submitted that it is constitutionally impermissible for the State to make the discharge of a person's legal obligations conditional upon an individual parting with his or her core biometrics. An individual should be able to comply with its legal obligations irrespective of whether or not a person seeks to protect his or her biological/bodily integrity and personhood by

refusing to part with biometric information. The State cannot compel a person, directly or indirectly, to part with this core biometric information under the threat of penal consequences for non-compliance of its mandatory legal obligations.

The discharge of an individual's legal obligations cannot be made dependent upon an invasion of his or her bodily integrity and his or her private information which the individual may not be willing to share with the State. The bargain underlying the impugned provision is an unconscionable, unconstitutional bargain.

III. Biometrics such as finger prints and iris scan are images or impressions of the physical body of a person and are part of his or her bodily integrity. Finger prints and iris scan are extensions of a person's body and no one can take these impression or images without impacting the bodily integrity of the individual. Any taking of an individual's fingerprints and iris scan without his or her express informed consent in writing amounts to a physical invasion and assault to his or her body.

Personal bodily integrity is guaranteed under Article 21 of the Constitution of India and each person has a fundamental right to self determine as to what he or she would like to do with his or her body and images and

impressions such as finger prints and iris scan that are biometric impressions of a body.

- IV. Intimately related to the fundamental principle that a person has full dominion and control over her core biometrics -- just as she has over her body and personal autonomy -- any collection of personal biometrics can only be done through free and informed written consent on the part of the individual. At a minimum, free consent would mean that a proposed enrollee is informed that the issuance of an Aadhaar number is voluntary and no person can suffer any adverse consequence by not enrolling for an Aadhaar number. The impugned provision completely effaces this concept of free consent. There can be no question of free consent in a situation where an individual is being coerced to part with its biometric information under the threat of penal consequences.

Further, even with respect to persons who already possess an Aadhaar Number, it is respectfully submitted that no consent whatsoever was taken for any of the enrolments carried out before the promulgation of the Aadhaar Act. The forms utilized by the private enrolment agencies as prescribed by UIDAI do not even purport to convey consent for either capture or use of biometric information. They do not specify the biometric

information being captured. There is no contemporaneous video record of any counselling carried out explaining to the individual the effect and consequences of parting with biometrics or the use to which the biometrics may be put. There is no government official present or any method of objectively assessing the fairness of the consent process (assuming there was one) at the stage of enrolment. In the circumstances, it is respectfully submitted that absent any free and informed consent, given the sensitive nature of the biometric information, the entire collection and record of UIDAI prior to the enactment of the Aadhaar Act amounts to wrongful deprivation of the most intimate personal property of individuals. Indeed, the taking of a person's fingerprints and iris scan without free and informed consent is a physical invasion of his or her bodily integrity. The respondents have no authority to retain biometrics illegally obtained. All these records are liable to be destroyed and a certification to that effect issued by the respondents to the satisfaction of this Court.

The element of free and informed consent is also not addressed or adequately protected in the Aadhaar Act even with respect to enrolments subsequent to bringing into force of this Act. The primary reason for this is that

the biometric information sought to be taken from an individual is his or her most valuable or precious information. This biometric information can be hacked and stolen from the CIDR as has happened the world over from several highly sensitive protected data repositories. Where centralized biometric data is stolen, the identity of a person is severely compromised since (a) biometric information of an individual can never be replaced; and (b) the wrongdoer coming to access this information can impersonate the real individual without the system detecting any mischief. The Aadhar project makes every person in India extremely vulnerable to the threat of identity theft and the impugned provision furthers this possibility by seeking to expand the Aadhar database.

Further, the core biometrics stored in the CIDR may be accessed and planted either with or without the connivance of the respondents and with no reasonable or realistic manner of the individual being able to disprove the misuse of the biometric information and the planting of say a finger print at a particular location.

The biometric information is extremely sensitive and without prejudice to the Petitioners' contention that the respondents have no authority in law to en masse collect biometrics of the citizenry, at a minimum, this

information is impressed with trust. The respondents while engaging in the exercise of collecting biometrics act as trustees at every stage. This role of a trustee, given the sensitive nature of the information must be exercised by the State or organs of the State alone and cannot under any circumstances be delegated to private parties operating without any governmental supervision. The crucial stage of obtaining consent/informed consent is entirely in the hands of private players even under the Aadhaar Act. Obtaining free consent from a citizen or resident by which he or she agrees to part with his or her biometrics is a non-delegable fiduciary exercise under the Constitution of India (assuming it is permissible at all). There is no manner whatsoever of the State satisfying itself that free and informed consent was secured and in the event of a dispute in this regard there is no manner of verifying the existence and nature of the consent.

The Aadhaar programme is built on the edifice of an illegal programme that has through a process of duplicity gathered personal sensitive data and information from citizens without securing informed consent. The programme is antithetical to fairness and good governance. There cannot be a legal fiction in matters of free and informed consent on the scale of 1 billion individuals. In such a situation, making the Aadhaar

number a mandatory requirement for filing of returns and possessing a PAN card, failure of which would result in penal consequences, in squarely contrary to any concept of free consent.

V. The State should ensure unhindered compliance of a person's obligation to pay income tax. Whether or not an individual is willing to part with his or her core biometric information is completely irrelevant to the discharge of this legal obligation which is based on an objective criterion of the income earned by a person. The impugned provision violates Article 14 of the Constitution of India and is palpably arbitrary and illegal inasmuch as it creates an artificial impermissible classification between those persons who have parted with biometrics and those who have not parted with biometrics for the purpose of payment and collection of income tax. Differently put, the impugned provision creates an artificial distinction between those persons who hold an Aadhaar number and those who do not with the latter group being under the threat of penal consequences under the Income Tax Act, given that non-possession of an Aadhaar number will not be a defence for non-compliance of mandatory provisions of the Income Tax Act.

The object of the Income Tax Act is to levy a tax on the income earned by a person and to provide a mechanism for the payment and collection of this tax. The parting of biometrics and/or possessing an Aadhaar number has no rational nexus to the requirement of payment of tax under the Income Tax Act and/or the efficient collection thereof. The impugned provision is clearly violative of Article 14 of the Constitution of India inasmuch as it creates a wrongful classification amongst a homogeneous group of taxpayers and this artificial classification also has no rational nexus to the objects of the Income Tax Act.

The impugned provision is also violative of Article 14 of the Constitution of India since it creates a situation of hostile discrimination between assesseees who are eligible to obtain an Aadhar number (i.e., individuals) and those who are not required to possess an Aadhar number (i.e., corporates, non-residents). It is submitted that there is no basis for this discrimination in view of the objects of the Income Tax Act.

VI The Petitioners herein are conscientious tax payers and have been discharging their liability under the Income Tax Act for several years. Their PANs have been indicated in this writ petition and the Respondents are in a position to verify the records of their income tax

payments. If required by this Hon'ble Court, the Petitioners will file their income tax returns in the present proceedings. The Petitioners have always been willing, and continue to be willing, to comply with the provisions of the Income Tax Act and make the necessary tax payments and their singular grievance is that they refuse to compromise their personal information (including biometric information) by entrusting it to the State.

VII. Under the Constitution of India, the State has a limited role. There are two facets that the Petitioners seek to emphasize here. The first facet is that the State cannot place itself in a position whereby it collects information over the lifetime of a citizen or resident and is in a position to dominate that individual on the basis of the profile of the individual now known to the State. The second facet of the constitutional role of the State is that it is a benign and benevolent State and not a police or authoritarian State. This aspect of a benevolent State is clearly derived from the Independence movement, the constitutional history leading to the framing and adoption of the Constitution of India and the preamble of the Constitution by which the People of India have given themselves the Constitution. A direct obligation on the State that flows from this is that the State must act in recognition of its limited role and is under an active

constitutional duty to preserve and protect the fundamental rights of the citizens. This implies that the State cannot enact a law or create a system in the form of the Aadhaar project which by design and operation will place the State in an extremely dominant position in relation to every citizen.

The Aadhaar project is issuing numbers to new born children immediately upon registration of birth, frequently in conjunction with the hospital or maternity facilities. There are several situations where a new born child or the mother may be in need of the benefit or service which would be covered by the scope of these expressions in the Aadhaar Act. Later, children would be entitled to benefits for food, education, scholarships, health interventions, etc. and in each of these situations, the Aadhaar Act envisages authentication through the Aadhaar system. As a person attains adulthood and his or her societal interactions increase, the number of occasions for receiving benefits, services and subsidies may likely increase -- for example every payment of salary or pension or indeed attendance at a government work place may require Aadhaar authentication. The Central Identities Data Repository (CIDR) that conducts authentication will electronically retain a record of every such authentication in respect of every resident. The

scope of surveillance is worsened by the impugned provision which links a person's PAN to his Aadhaar number and causes details relating to a person's income and expenditure pattern to become available with each Aadhaar authentication.

In this manner, the State is empowered by the Aadhaar Act to collect information of an individual over the course of his or her lifetime and retain such information throughout its lifetime. It is respectfully submitted that this centralized collection of information completely alters the relationship between citizen and State. This not only destroys the privacy of an individual with respect to his or her personal activities but it also places the State in a position whereby merely on the basis of aggregate authentication records it can build an entire profile of the individual, community and segment of the citizenry. The Aadhaar project inasmuch as it enables lifetime records of every individual to be maintained at a centralized data base is destructive of personal freedoms and allows the State to dominate over the people of India.

In such a situation making the Aadhar number mandatory or face penal consequences, simply leads to a compulsion for every citizen to part with his personal freedoms and allow the State to dominate over them.

VIII. The impugned provision when examined in the context of the Aadhaar Act, ought to be tested for what it is: a statutory provision that seeks to extend and spread the use of Aadhaar identification and make it pervasive. The stated object of the respondents for several years even prior to the enactment of the Aadhaar Act, was to replace multiple identification systems currently in vogue and available to the citizenry, with a single ubiquitous identification mechanism that is the Aadhaar number.

The Petitioners submit that this objective of creating a single pervasive identification over time is itself illegal. There are several facets to the illegality and amongst them is the very negation of an individual citizen's freedom to identify through different means. The State cannot compel identification in one manner alone and make the discharge of legal obligations conditional upon the use of such method of identification. The Petitioners submit that the coercive foundation of the impugned provision is in substance an illegal objective that renders the provision *ultra vires* Article 14 of the Constitution of India.

The intended universality of the Aadhaar number promoted through the vehicle of the impugned provision completely destroys an individual's control over his or her personal information and facilitates profiling by both the

State as well as private entities in violation of the fundamental right to privacy as well as inalienable common law right to privacy.

- [X]. The impugned provision is excessive and disproportionate inasmuch as it makes compliance of mandatory legal obligations under the Income Tax Act conditional upon an individual enabling invasion of its bodily and personal integrity. The Petitioners submit that there are numerous less invasive and less disruptive methods of verifying the identity of tax payers and ensuring tax collection. The PAN is one such method. In enacting the impugned provision, the legislature has failed to identify the reasons which made it necessary to link a person's PAN to his or her Aadhaar number and why the PAN was suddenly considered inadequate as a sole tool to monitor the payment and collection of income tax.
- X The Constitution of India, specifically Articles 14, 19, 20 and 21 proscribe the creation of a surveillance State. The Constitution does not allow any system or programme to be implemented by the State that results in en masse surveillance. The State is under an obligation under Article 13(2) of the Constitution of India to ensure that it shall not make any law which takes away or abridges the rights conferred under Part III of the Constitution of

India. Nevertheless, the Aadhaar Act purports to provide legal sanction to a programme that lays the framework for real time surveillance and that enables surveillance of every Indian.

It is respectfully submitted that the constitutional limitations are such that the Government of India cannot engage in surveillance of Indian citizens even where each of these citizens volunteers to be subject to surveillance.

XI. A citizen's right to privacy is a fundamental right that is constitutionally protected. The right to privacy in the context of the impugned provision has, *inter alia*, the following dimensions (i) a citizen's complete right over ownership and control of his core biometric information to the exclusion of all others including the State; (ii) a right to self-determination with respect to core biometric information without fear of penal consequences, which right extends even after a person has (voluntarily or otherwise) parted with his or her core biometric information; and (iii) the right to ensure that the personal biometric information cannot potentially be utilized for surveillance, tracking or tagging or profiling of the individual.

Each of these dimensions of privacy are actively violated by the impugned provision. The impugned provision is

unconstitutional inasmuch as it violates the fundamental right to privacy.

xii. Where private sensitive core biometric and demographic information is being stored by the respondents, minimal standards of national security as well as aspects such as the financial security of the nation require that the respondents have control over the manner and method of storage, access and operation with respect to Aadhaar data. Here, the systems operating Aadhaar are by third party overseas defence contractors and corporations associated with foreign governments and intelligence agencies. The failure and neglect on the part of the respondents to create a sufficiently secure system based on indigenous technology, control and checks undermines the Aadhaar project and takes away the credibility, integrity and security of the programme based on which the Aadhaar Act is founded. It is an extension of the fiduciary and trusteeship principle that demands that the government of India itself has complete and comprehensive capacity to deal with every aspect of the Aadhaar programme, specifically the de-duplication and storage process. The respondents have no knowledge in this behalf within their own capacity. The third party private defence contractors and multinationals who have provided the biometric recognition and de-duplication

technology have power and control to access this data, manipulate this data, transmit this data overseas, remove this data, commercially exploit this data, etc. No provision in the Aadhaar Act requires these technologies and the control of these operations to be handed over and controlled by UIDAI. Under the systems recognized by the Aadhaar Act, these multinational corporations in perpetuity can exercise dominion and control over the Aadhaar authentication system with full access to sensitive biometrics and demographic details of Indian citizens and residents.

The Aadhaar programme is run by a technology over which the respondents exercise no real control. This amounts to a massive and pervasive national security compromise that is constitutionally impermissible. The Aadhaar programme severely compromises national security by allowing private data of individuals to be accessed by foreign corporations who may utilize and exploit this data against the interest of individuals as well as against national security interest.

XIII. Further, is submitted that the Union of India lacks the legislative competence to pass the impugned provision inasmuch as no entry in List I or List III of Schedule VII of the Constitution of India empowers the Central Government in this regard. The legislative competence

of the Central Government to impose taxes on income under Entry 82 of List I does not extend to enacting the impugned provision.

G. JURISDICTION

34. This petition is being preferred to this Hon'ble Court under Article 32 of the Constitution of India having regard to the violation of Article 14, 19 and 21 of the Constitution of India as explained above. Having regard to the nationwide implications of the important issues raised in this petition, this Hon'ble Court ought to entertain and hear the present petition. The Petitioners state that they have not filed any other similar petition challenging the impugned provision before this Hon'ble Court or any High Court. However, as set out above, the Petitioners No. 1 and 2 herein have challenged the Aadhaar project and the Aadhaar Act in their previous writ petitions.

H. PRAYERS

In the premises, this Hon'ble Court may be pleased to issue appropriate declarations, writs, orders and directions as set out below:

- a) This Hon'ble Court may be pleased to issue an appropriate writ, order or direction in the nature of a mandamus to declare that Section 139AA of the Income Tax Act, 1961 (As introduced by Section 56 of the Finance Act, 2017) is *ultra vires*, unconstitutional, null

and void and in particular violate Articles 14, 19 and 21 of the Constitution of India;

- b) This Hon'ble Court may be pleased to issue an appropriate writ, order or direction in the nature of mandamus declaring that income tax return of individual will not be rejected on the basis that he or she does not have an Aadhaar number;
- c) This Hon'ble Court may be pleased to issue an appropriate writ, order or direction in the nature of mandamus declaring that the PAN card of an individual will not be invalidated on the basis that he or she does not have an Aadhaar number;
- d) This Hon'ble Court may be pleased to issue an appropriate writ, order or direction in the nature of mandamus against the Respondents directing them to forthwith forbear from implementing or acting pursuant to or in implementation of Section 139AA of the Income Tax Act, 1961;
- e) This Hon'ble Court may be pleased to issue an appropriate writ, order or direction in the nature of mandamus against the Respondents directing them to forthwith forbear from requiring assesseees under the Income Tax Act, 1961 to obtain an Aadhar number or an Aadhar card;
- f) This Hon'ble Court may be pleased to issue an appropriate writ, order or direction in the nature of mandamus against the Respondents directing them to forthwith clarify by issuing appropriate announcements, circulars and/or directions that no citizen of India is required to obtain an Aadhar number/Aadhar card and that the the program under the Aadhar Act is entirely

voluntary even for assesseees under the Income Tax Act, 1961;

- g) This Hon'ble Court may be pleased to award costs relating to the present petition to the Petitioners; and
- h) This Hon'ble Court may be pleased to issue any other writ/order/direction in the nature of mandamus as this Hon'ble Court may deem fit and proper in the circumstances of the case.

AND FOR THIS ACT OF KINDNESS , THE PETITIONERS
SHALL, AS IN DUTY BOUND , EVER PRAY

DRAWN BY:
UDAYADITYA BANERJEE
ADVOCATE

FILED BY:

M/s. K.J. JOHN & CO.
ADVOCATES FOR THE PETITIONERS

SETTLED BY:
SHYAM DIVAN,
SENIOR ADVOCATE
NEW DELHI

DRAWN ON:

FILED ON:

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION
WRIT PETITION (C) NO. OF 2017

IN THE MATTER OF:

Mr. S.G. Vombatkere & Anr.

...Petitioners

Versus

Union of India & Anr.

...Respondents

AFFIDAVIT

I, Bezwada Wilson, S/o Late Shri Yacob, aged about 48 years,
R/o 36/13 Ground Floor, East Patel Nagar, New Delhi, do hereby solemnly
affirm and state as follows:-

1. I am the Petitioner No. 2 herein, I am fully conversant with the facts and circumstances of the present case and am as such competent to swear the present affidavit on behalf of the Petitioners.
2. I have gone through the contents of the accompanying List of Dates and the Writ Petition running into pages " " to " " and have understood the list of dates at pages " " to " " and paras " " to " " of the Writ Petition and say that the facts set out therein are true to my knowledge as derived from the records maintained by me and the submissions made therein are on legal advice received from my Advocates and believed to be true and correct.

3. I have read with understood the contents of the accompanying Application for interim reliefs and say that the facts set out therein are true and correct to my knowledge and the submissions made therein are on advise received from my Advocates and believed to be true.

4. I say that the Annexures P/1 to P/ to the accompanying Writ Petition are true and correct copies of their respective originals.


DEPONENT

VERIFICATION:

Verified at New Delhi on this day of April, 2017, that the contents of paragraphs 1 to 4 of my above affidavit are true and correct that no part of it is false and nothing material has been concealed there from.


DEPONENT

RELEVANT PROVISIONS OF THE CONSTITUTION OF INDIA

• ARTICLE 14 - Right to Equality

The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India

• ARTICLE 19 - Right to Freedom

(1) All citizens shall have the right— (a) to freedom of speech and expression; (b) to assemble peaceably and without arms; (c) to form associations or unions; (d) to move freely throughout the territory of India; (e) to reside and settle in any part of the territory of India; 1 [and] (g) to practise any profession, or to carry on any occupation, trade or business. 3

[(2) Nothing in sub-clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interests of 4 [the sovereignty and integrity of India,] the security of the State, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence.]

(3) Nothing in sub-clause (b) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of 4 [the sovereignty and integrity of India or] public order, reasonable restrictions on the exercise of the right conferred by the said sub-clause.

(4) Nothing in sub-clause (c) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of 4 [the sovereignty and integrity of India or] public order or morality, reasonable restrictions on the exercise of the right conferred by the said sub-clause.

(5) Nothing in 1 [sub-clauses (d) and (e)] of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, reasonable restrictions on the exercise of any of the rights conferred by the said sub-clauses either in the interests of the general public or for the protection of the interests of any Scheduled Tribe.

(6) Nothing in sub-clause (g) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the general public, reasonable restrictions on the exercise of the right conferred by the said sub-clause, and, in particular, 2 [nothing in the said sub-clause shall affect the operation of any existing law in so far as it relates to, or prevent the State from making any law relating to,—

(i) the professional or technical qualifications necessary for practising any profession or carrying on any occupation, trade or business, or

(ii) the carrying on by the State, or by a corporation owned or controlled by the State, of any trade, business, industry or service, whether to the exclusion, complete or partial, of citizens or otherwise].

• **ARTICLE 21 - Protection of life and personal liberty.**

No person shall be deprived of his life or personal liberty except according to procedure established by law.

RELEVANT PROVISIONS OF THE INCOME TAX ACT, 1961 (as introduced by the Finance Act, 2017)

- **139AA** - (1) Every person who is eligible to obtain Aadhaar number shall, on or after the 1st day of July, 2017, quote Aadhaar number—
 - (i) in the application form for allotment of permanent account number;
 - (ii) in the return of income:

Provided that where the person does not possess the Aadhaar Number, the Enrolment ID of Aadhaar application form issued to him at the time of enrolment shall be quoted in the application for permanent account number or, as the case may be, in the return of income furnished by him.

(2) Every person who has been allotted permanent account number as on the 1st day of July, 2017, and who is eligible to obtain Aadhaar number, shall intimate his Aadhaar number to such authority in such form and manner as may be prescribed, on or before a date to be notified by the Central Government in the Official Gazette:

Provided that in case of failure to intimate the Aadhaar number, the permanent account number allotted to the person shall be deemed to be invalid and the other provisions of this Act shall apply, as if the person had not applied for allotment of permanent account number.

(3) The provisions of this section shall not apply to such person or class or classes of persons or any State or part of any State, as may be notified by the Central Government in this behalf, in the Official Gazette.

Explanation.—For the purposes of this section, the expressions—

- (i) "Aadhaar number", "Enrolment" and "resident" shall have the same meanings respectively assigned to them in clauses (a), (m) and (v)68b of section 2 of the Aadhaar (Targeted Delivery of Financial and other Subsidies, Benefits and Services) Act, 2016 (18 of 2016);
- (ii) "Enrolment ID" means a 28 digit Enrolment Identification Number issued to a resident at the time of enrolment.]

Petitioner No1. i.e. Sudhir Vombatkere's profile.

The 1st Petitioner is a citizen of India and is aged about 71 years. The 1st Petitioner is a retired Indian Army officer who retired after 35 years in uniform in the rank of major general from the post of Additional DG in charge of Discipline and Vigilance at Army HQ, New Delhi. He has been awarded the Visishta Seva Medal (VSM) by President of India in 1993 for his distinguished service rendered in Ladakh.

He holds a PhD degree in civil structural dynamics from I.I.T., Madras. After retirement, he is engaged in voluntary social work at Mysore and other areas around Karnataka. The 1st Petitioner is also an Adjunct Associate Professor in International Studies of the University of Iowa, USA and teaches under graduate students from USA and Canada in programs where the students visit Mysore.

In so far as the Unique Identification Project UID project") is concerned, the 1st Petitioner has written various articles pointing out the security risks of the project.

THE HINDU

Published February 6, 2013 00:30

The architects of the unique identification scheme are yet to provide satisfactory answers to concerns about data security.

The Aadhaar scheme of the Unique Identification Authority of India (UIDAI) is to provide India's billion-plus people with a unique identification number. Enrolment is not mandatory, though it was

mentioned that it would be difficult for people to access public services if not done. The scheme requires individuals to provide their photograph; fingerprints and iris scan along with documentary personal information for data capture by outsourced operators. It is meant to bypass the corrupt bureaucratic system and deliver government subsidies and grants to the poor, and bring them into the banking system. Sceptics argue that it is 'an effort to capture the funds of hundreds of millions of micro- and nano-investors who are today outside the banking system, to bring them into the credit economy.

The scheme was introduced as a pilot project in Karnataka's Mysore district. The poor and those who survive on daily wages were not enthusiastic about enrolment, because it meant losing four or five days wages, to stand in queues, to fill up forms, to produce documents, to provide biometrics, etc., and later, to open bank accounts. The UIDAI over came the initial reluctance by wide advertisement of the benefits of enrolment. When this too did not achieve the target set, the local administration informed the public that PDS ration and LPG supply would not be available without the Aadhaar number. This resulted in serpentine queues right through the day at enrolment centres, at the end of which the UIDAI could claim that 95 per cent of Mysore district's population had enrolled itself into the scheme.

Media reports indicate that commencing January 1, 2013, MGNREGA, the Rajiv Gandhi Awas Yojana (RGAY), the Ashraya housing scheme, Bhagyalakshmi and the social security and pension scheme will be

linked with Aadhaar in Mysore district. This linking, with rights like salary and pension, and important entitled benefits and services, has raised some hackles because enrolment is not mandatory.

It has led to questions on whether salary and pension rights, and benefits like PDS ration and LPG supply can be denied just because an individual does not possess a unique Aadhaar number. Today, teachers in Maharashtra and government employees in Jharkhand cannot draw their salaries. Apart from pro-poor projects like MGNREGA and RGAY, even jobs, housing, provident funds and registering a marriage now require enrolment. From being not mandatory, the "poor-inclusive" Aadhaar scheme appears to have quietly metamorphosed into becoming exclusionary and non-optional.

The UIDAI's own Biometrics Standards Committee stated that retaining biometric efficiency for a database of more than one billion people "has not been adequately analysed" and the problem of fingerprint quality in India "has not been studied in depth." Thus the technological basis of the project remains doubtful.

Criticism from the top

However, the severest critic of the entire scheme has been the Parliamentary Standing Committee on Finance (PSCF), which deliberated that the Aadhaar scheme is "full of uncertainty in technology as the complex scheme is built upon untested, unreliable technology and several assumptions." It found Aadhaar to be "directionless" and "conceptualized with no clarity." But the

UIDAI shelters under the Prime Minister's protective wing and continues to stonewall not only public queries and criticism, but also the unequivocal verdict of the PSCF.

Possibly even more serious is data security, and the consequent threat to privacy. The UIDAI claims that I access to its database will be secure from intelligence agencies. This claim is hollow, because the Aadhaar project is contracted to receive technical support from L-I Identity Solutions!(now MorphoTrust USA), a well-known defence contractor. Contracts are also awarded to Accenture Services Pvt. Ltd., which works with the U.S. Homeland Security, and Ernst & Young to install the UIDAI's Central ID Data Repository. It is impossible to ensure database security when technical providers are American business corporations, and U.S. law requires them to provide information demanded of them, to U.S. Home land Security. But the UIDAI is in denial.

If biometric data and other personal information fall into the hands of unauthorised agencies, privacy is unequivocally compromised. Compromising an individual's personal data affects only that person, but when the personal data of many millions of people is involved, there is potential for a national disaster. The fact that the UIDAI is silent on or evasive about these security concerns does not inspire confidence in the capability of the UIDAI or the Aadhaar system to maintain the right to personal privacy.

Though the Aadhaar project is "not mandatory," enrolment by threat of exclusion from availing benefits , and services, and threat of

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denial of rights like salary or pension makes it non-optional. This kind of deviousness is unbecoming of a democratically elected government.

Coming on top of many huge scams, the present government may suffer electorally if it persists in using unethical, extra-legal coercion to impose the security-defective, technologically unproven, very expensive UID Aadhaar scheme on the public.

(Major General S.G. Vombatkere, who retired as Additional Director General, Discipline & Vigilance in Army HQ, New Delhi, writes on strategic and development-related issues.)

Keywords Authority Aadhaar scheme, Unique identification Authority of India, Biometrics Standards Committee, MGNREGA, PDS ration, Rajiv Gandhi Awas Yojana.

// TRUE COPY //

ITEM NO.5+56

Court No.5

SECTION PIL

SUPREME COURT OF INDIA
RECORD OF PROCEEDINGS
WRIT PETITION (CIVIL) NO(s). 494 OF 2012

JUSTICE K.S.PUTTASWAMY(RETD)& ANR

Petitioner(s)

VERSUS

UNION OF INDIA & ORS.

Respondent(s)

(With appln(s) for stay)

WITH T.P.(C) NO. 47-48 of 2013
(With appln(s) for stay and office report)
(Appln. for deletion of the name of petitioner no. 1)

T.P.(C) NO. 476 of 2013
(With appln(s) for stay and office report)

W.P.(C) No. 829 of 2013
(With appln(s) for interim relief and office report)

Date: 23/09/2013 These Petitions were called on for hearing today.

CORAM :

HON'BLE DR. JUSTICE B.S. CHAUHAN
HON'BLE MR. JUSTICE S.A. BOBDE

For Petitioner(s) Mr. Anil B. Divan, Sr. Adv.
Mr. Ankit Goel, Adv.
Mr. Ranvir Singh, Adv.
Mr. Sanjay Yadav, Adv.
Mr. Anish Kumar Gupta, Adv.
Ms. Deepshikha Bharati, Adv.
Mr. S.S. Shamsbery, Adv.
Mr. Rajeev K. Singh, Adv.
Mr. Nachiketa Joshi, Adv.

Mr. P.R. Kovilan Poongkuntran, Adv.
Mrs. Geetha Kovilan, Adv.

Mr. Shyam Divan, Sr. Adv.
Mr. Pratap Venugopal, Adv.
Ms. Meenakshi Chauhan, Adv.
Mr. Varun Singh, Adv.
Mr. Gaurav Nair, Adv.
for M/s. K.J. John & Co.

For Respondent(s) Mr. Mohan Parasaran, SG
Mr. L. Nageshwar Rao, ASG
Mr. Farrukh Rasheed, Adv.

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**IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION**

TRANSFER PETITION (CIVIL) NO(s). 47-48 OF 2013

THE GOVT. OF INDIA & ORS. ETC.

....Petitioner(s)

VERSUS

S. RAJU & ANR. ETC.

....Respondent(s)

WITH

TRANSFER PETITION(CIVIL) NO(s). 476 OF 2013

ORDER

Heard learned counsel for the parties.

Having regard to the facts and circumstances of the case, we are satisfied that this is a fit case where the prayer for transfer is to be allowed.

On the facts of the case, we allow these Transfer Petitions and direct that W.P(C) No.439 of 2012 titled S. Raju Vs. Govt. of India and Others pending before the D.B. of the High Court of Judicature at Madras and PIL No.10 of 2012 titled Vickram Crishna and Others Vs. UIDAI and Others pending before the High Court of Judicature at Bombay be transferred to this Court. The Registry of the High Court of Madras and Registry of the High Court of Bombay are requested to transmit the original records to this Court expeditiously.

These Transfer Petitions are accordingly allowed.

.....J.
(Dr. B.S. CHAUHAN)

.....J.
(S.A. BOBDE)

NEW DELHI;
SEPTEMBER 23, 2013.

//TRUE COPY//

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Mr. Alok Mishra, Adv.
Mr. D.S. Mahra, Adv

UPON hearing counsel the Court made the following

O R D E R

Issue notice in W.P.(C) No. 829/2013.

Application for deletion of the name of petitioner no. 1 in T.P.(C) Nos. 47 of 2013 is allowed.

T.P.(C)nos. 47-48 of 2013 and T.P.(C) No. 476 of 2013 are allowed in terms of the signed order.

All the matters require to be heard finally. List all matters for final hearing after the Constitution Bench is over.

In the meanwhile, no person should suffer for not getting the Adhaar card inspite of the fact that some authority had issued a circular making it mandatory and when any person applies to get the Adhaar Card voluntarily, it may be checked whether that person is entitled for it under the law and it should not be given to any illegal immigrant.

(DEEPAK MANSUKHANI)
Court Master

(M.S. NEGI)
Court Master

(Signed order is placed on the file)

ANNEXURE – P/3

ITEM NO.1

COURT NO.5

SECTION PIL

SUPREME COURT OF INDIA
RECORD OF PROCEEDINGS
WRIT PETITION (CIVIL) NO(s). 494 OF 2012

JUSTICE K.S.PUTTASWAMY(RETD)& ANR

Petitioner(s)

VERSUS

UNION OF INDIA & ORS.

Respondent(s)

(With appln(s) for directions, stay, intervention, clarification /
modification of court's order, impleadment and office report)
(For final disposal)

WITH W.P(C) NO. 829 of 2013
(With appln(s) for interim relief and impleadment and office report)
(For final disposal)

W.P(C) NO. 932 of 2013
(With appln(s) for directions and office report)

W.P.(C) No. 833 of 2013
(With appln(s) for directions & impleadment & office report)
(For final disposal)

T.C.(C) No. .../2013 @ T.P.(C) No. 47-48/2013
(With appln(s) for stay and deletion of the name of petitioner)
(For final disposal)

T.C.(C) No. /2013 @ T.C.(C) No. 476/2013
(With appln(s) for stay)
(For final disposal)

Date: 26/11/2013 This Petition was called on for hearing today.

CORAM :

HON'BLE DR. JUSTICE B.S. CHAUHAN
HON'BLE MR. JUSTICE S.A. BOBDE

For Petitioner(s)

Mr. Soli J. Sorabjee, Sr. Adv.
Mr. Mehernaz Mehta, Adv.
Mr. Ankit, Adv.
Mr. Anil B. Diwan, Sr. Adv.
Mr. Ankit Goel, Adv.
Ms. Deepshikha Bharti, Adv.
Ms. Nachiketa Joshi, Adv.
M. Pattabhi Ram, Adv.
Mr. S.S. Shamsherya, Adv.
Mr. Nishant Katreśwarkar, Adv.
Mr. Mehernaaz Mehta, Adv.
Mr. Sanjay Yadav, Adv.
Mr. Anish Kumar Gupta, Adv.
Mr. Mohit Chaudhary, Adv.
Ms. Varnika Singh, Adv.
Mr. Imran Ali, Adv.
Ms. Damani Chawla, Adv.
Mr. Harsh Sharma, Adv.
Ms. Jyoti Mendiratta, Adv.

Mr. Shyam Divan, Sr. Adv.
 Mr. Pratap Venugopal, Adv.
 Ms. Meenakshi Chauhan, Adv.
 Mr. Varun Singh, adv.
 Mr. Anuj Sarna, Adv.
 Mr. Nirman Sharma, Adv.
 Mr. Abhinav Malhotra, Adv.
 M/S. K.J. John & Co., Adv.

Mr. P.S. Narashima, Sr. Adv.
 Mr. V. Mohana, Adv.
 Mr. B. Raghunath, Adv.
 Mr. S. Prasana, Adv.
 Mr. Ishaan Geroje, Adv.
 Mr. Vijay Kumar.

Ms. Aishwarya Bhati, Adv.
 Mr. D.S. Mahra, Adv.

Mr. P.R. Kovilan, Adv.
 Mrs. Geetha Kovilan, Adv.

For Respondent(s) Mr. Mohan Parasaran, S.G.
 Mr. Alok Kumar, Adv.
 Mr. Alok Prassana, Adv.
 Mr. Anupam Prasad, Adv.
 Mr. D.S. Mahra, Adv.
 Mr. Sunil Kumar, Sr. Adv.
 Mr. Tapesk Kumar Singh, Adv.
 Mr. Mohd. Waquas, Adv.

Mr. Mohit D. Ram, Adv.
 Ms. Madhvi Chaudhary, Adv.
 Mr. Vasv Anant Raman, Adv.

For Intervenors Mr. L. Nageshwara Rao, ASG
 Mr. Amit Meharia, Adv.
 Ms. Khushbu Jain, Adv.
 For M/s Meharia & Co., Adv.

Mr. Sai Krishna Rajgopal, Adv.
 Ms. Julian George, Adv.

Mr. Nikhil Nayyar, Adv.
 Ms. Pritha Srikumar Iyer, Adv.
 Mr. Dhananjay Baijal, Adv.
 Ms. Akanksha, Adv.

UPON hearing counsel the Court made the following

ORDER

After hearing the matter at length, we are of the view that all the States and Union Territories have to be impleaded as respondents to give effective directions. In view thereof notice be issued to all the States and Union Territories through standing counsel.

The advocates who have already entered appearance must file their replies within a period of three days from today.

Learned standing counsel for the States who were not represented may take instructions from their respective States and file their response within one week.

List this matter for further hearing on 10th December, 2013.

Interim order to continue, in the meantime.

[Neeta]
 Sr. P.A.

[M.S. Negi]
 Court Master

//TRUE COPY//

ANNEXURE - P/4

ITEM NO.57

COURT NO.4

SECTION IIA

S2

SUPREME COURT OF INDIA
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Crl) No(s).2524/2014

(From the judgement and order dated 26/02/2014 in CRLWP No.10/2014, of The
HIGH COURT OF BOMBAY AT PANAJI)

UNIQUE IDENTIFICATION AUTH.OF INDIA &ANR

Petitioner(s)

VERSUS

CENTRAL BUREAU OF INVESTIGATION

Respondent(s)

(With appln. for exemption from filing c/c of the impugned Judgment and office
report)

Date: 24/03/2014 This Petition was called on for hearing today.

CORAM :

HON'BLE DR. JUSTICE B.S. CHAUHAN
HON'BLE MR. JUSTICE J. CHELAMESWAR

For Petitioner(s)

Mr.Mohan Parasaran, SG
Mr.Rakesh Khanna, ASG
Mr. Zohen Hossain, Adv.
Mr. Alok Mishra, Adv.
Mr. D.S. Mahra, Adv.

For Respondent(s)

UPON hearing counsel the Court made the following

ORDER

Issue notice.

In addition to normal mode of service, dasti service, is permitted.

Operation of the impugned order shall remain stayed.

In the meanwhile, the present petitioner is restrained from transferring
any biometric information of any person who has been allotted the Aadhaar
number to any other agency without his consent in writing.

More so, no person shall be deprived of any service for want of
Aadhaar number in case he/she is otherwise eligible/entitled. All the authorities
are directed to modify their forms/circulars/likes so as to not compulsorily require
the Aadhaar number in order to meet the requirement of the interim order
passed by this Court forthwith.

Tag and list the matter with main matter i.e. WP(C) No.494/2012.

[Usha Bhardwaj]
A.R.-cum-P.S.

[M.S. Negi]
Assistant Registrar

ANNEXURE P/5

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ITEM NO.1
PIL(W)/XVIA

COURT NO.6

SECTION

SUPREME COURT OF INDIA
RECORD OF PROCEEDINGS

Writ Petition(s)(Civil) No(s). 494/2012

JUSTICE K.S.PUTTASWAMY(RETD)& ANR
Petitioner(s)

VERSUS

UNION OF INDIA & ORS.
Respondent(s)

(With appln(s) for stay, impleadment, clarification/modification of
Court's order, intervention, directions, impleadment, permission
to file additional documents and office report)

(For Final Disposal)

WITH

T.C.(C) No. 151/2013

(With impleadment as party respondent and modification of
Court's order)

T.C.(C) No. 152/2013 W.P.(C) No. 829/2013

(With appln.(s) for impleadment and impleadment/directions and
interim relief and office report)

W.P.(C) No. 833/2013

(With appln.(s) for impleadment and appln.(s) for permission to
file additional documents and Office Report)

W.P.(C) No. 932/2013

(With appln.(s) for directions and interim directions and Office
Report)

T.P.(C) No. 312/2014

(With Office Report)

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T.P.(C) No. 313/2014
(With Office Report)

W.P.(C) No. 37/2015
(With amendment of memo of parties and interim stay and
permission to file additional documents and office report) W.P.(C)
No. 220/2015 (Directions)

W.P. (C) No. 220/2015
(Directions)

T.P.(C) No. 921/2015
(Office report)

Contempt Petition(C) No. 144/2014 in W.P.(C) No. 494/2012
(Directions)

Contempt Petition(C) No. 470/2015 in W.P.(C) No. 494/2012
(With appln(s) for exemption from filing O.T.)

Date : 11/08/2015 These petitions were called on for
pronouncement of orders today.

CORAM : HON'BLE MR. JUSTICE J. CHELAMESWAR
HON'BLE MR. JUSTICE S.A. BOBDE
HON'BLE MR. JUSTICE C. NAGAPPAN

For Petitioner(s)

WP(C) No. 829/2013 Mr. Shyam Divan, Sr. Adv.
Mr. Aayush Agarwal,
Adv. Ms. Prasanna S., Adv.
Ms. Niharika, Adv.
Mr. Pratap Venugopal, Adv.
Mr. Gaurav Nair, Adv.
For M/s. K.J. John & Co.

WP(C) no. 37/2015 Mr. Gopal Subramaniam, Sr. Adv.
Ms. Aishwarya Bhati, Adv.
Mr. Talha Abdul Rahman, Adv.
Mr. Prateek Chaddha, Adv.

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Mr. Ankur Kashyap, Adv.
Mr. Kushagra Pandey, Adv.
Ms. Anusha Ramesh, Adv.
Mr. Rudra Pratap, Adv.
Mr. Saransh Kumar, Adv.
Mr. Anirban Sen, Adv.
Ms. Neha Meena, Adv.
Ms. Madhurima Ghosh, Adv.
Mr. T. Gopal, Adv.

WP(C) no. 494/2012 Mr. Soli Sorabjee, Sr. Adv.
Mr. Anil B. Diwan, Sr. Adv.
Mr. Ankit Goel, Adv.
Mr. Sanjay Kumar Yadav, Adv.
Mr. Anish Kumar Gupta, Adv.

TP(C) No. 151/2013 Mrs. Geetha Kovilan, Adv.
Mr. P.R. Kovilan, Adv.

TP(C) No. 921/2015 Ms. Pinky Anand, ASG
Mr. A.K. Sanghi, Sr. Adv.
Mr. S.S. Rawat, Adv.
Mr. D.S. Mahra, Adv.

TC(C) No. 152/2013 Ms. Meenakshi Arora, Sr. Adv.
Mr. Rahul Narayan, Adv.
Mr. Mohit Singh, Adv.
Mr. Vijay Kumar, Adv.
Mr. Amit Meharia, Adv.
Mr. Dhritiman Das, Adv.
for M/s. Meharia & Company, Adv.

WP(C) no. 932/2013 Dr. Abhishek Atrey, Adv.
CC(C) no. 470/2015 Mr. Sella Kumar, Adv.
Mr. Sumit Rajora, Adv.

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For Respondent(s)
UOI

Mr. Mukul Rohatgi, AG
Ms. Pinky Anand, ASG
Mr. R. Balasubramanian, Adv.
Mr. Ajay Sharma, Adv.
Mr. S.S. Rawat, Adv.
Ms. Devanshi Singh, Adv.
Ms. Binu Tamta, Adv.
Mr. Zoheb Hossain, Adv.
Ms. Kritika Sachdeva, Adv.
Ms. Ranjeeta Rohatgi, Adv.
Mr. Vakul Sharma, Adv.
Ms. Meenakshi Grover, Adv.
Mr. Karan Seth, Adv.
Mr. D.S. Mahra, Adv.
Mr. K.K. Venugopal, Sr. Adv.
Mr. Gopal Sankaranarayanan, Adv.
Ms. Purna Priyadarshini, Adv.
Mr. Ankur Talwar, Adv.
Ms. Nidhi, Adv.
Ms. Savita Singh, Adv.

IA no. 11/2014

State of Telangana Mr. S. Udaya Kumar Sagar, Adv.
Mr. Krishna Kumar Singh, Adv.

RBI Mr. Jayant Bhushan, Sr. Adv.
Mr. Kuldeep S. Parihar, Adv.
Mr. H.S. Parihar, Adv.

NCT of Delhi Mr. J.M. Kalia, Adv.

State of Goa Mr. Ninad Laud, Adv.
Mr. Karan Mathur, Adv.
Mr. Jayant Mohan, Adv.

A&N Administration Mr. K.V. Jagdishvaran, Adv.

Ms. G. Indira, Adv.

- State of Assam M/s. Corporate Law Group
- State of HP Mr. J. S. Attri, Sr. Adv.
Mr. Suryanarayana Singh, Sr. AAG
Mr. Varinder Kumar Sharma, Adv.
Ms. Pragati Neekhara, Adv.
- State of Maharashtra Mr. Nachiketa Joshi, Adv.
Mr. Nishant Katneshwarkar, Adv.
Mr. E.C. Agrawala, Adv.
- State of Bihar Mr. Abhinav Mukerji, Adv.
Ms. Bihu Sharma, Adv.
- State of AP Mr. Guntur Prabhakar, Adv.
Ms. Prerna Singh, Adv.
- State of Uttarakhand Mr. Jatinder K. Bhatia, Adv.
- State of TN Mr. B. Balaji, Adv.
Mr. R. Rakesh Sharma, Adv.
Mr. Mishra Saurabh, Adv.
- State of Manipur Mr. Sapam Biswajit Meitei, Adv.
Mr. Z.H. Isaac Haiding, Adv.
Mr. S. Vijayanand Sharma, Adv.
Mr. Ashok Kumar Singh, Adv.
- State of Mizoram Mr. K.N. Madhusoodhanan, Adv.
Mr. T.G.N. Nair, Adv.
- State of Sikkim Mr. A. Mariarputham, AG
Ms. Aruna Mathur, Adv.
Mr. Yusuf Khan, Adv.
Mr. K. Vijay Kumar, Adv.
M/s. Arputham Aruna & Co.
- State of Nagaland Ms. K. Enatoli Sema, Adv.

ECI	Mr. Edward Belho, Adv.
	Mr. Amit Kumar Singh, Adv.
	Mr. Ashok Desai, Sr. Adv.
	Mr. S.K. Mendiratta, Adv.
	Ms. Monisha Nanda, Adv.
	Mr. Mohit D. Ram, Adv.
	Mr. Sajjan Poovayya, Sr. Adv.
	Mr. Praveen Sehrawat, Adv.
	Mr. Priyadarshi Banerjee, Adv.
	Mr. Sarans Jain, Adv.
State of Assam	Mr. Gopal Singh, Adv.
	Mr. Rituraj Biswas, Adv.
	Ms. Rashmi Srivastava, Adv.
State of Arunachal Pradesh	Mr. Anil Shrivastav, Adv.
	Mr. Rituraj Biswas, Adv.
UT Chandigarh	Ms. Vimla Sinha, Adv.
	Mr. Gopal Singh, Adv.
State of Kerala	Mr. Jogy Scaria, Adv.
	Mr. Reegan S. Bel, Adv.
State of Punjab	Mr. Sanchar Anand, AAG
	Mr. Apoorv Singhal, Adv.
	Mr. Jagjit Singh Chhabra, Adv.
State of Jharkhand	Mr. Ajit Kumar Sinha, Sr. Adv.
	Mr. Tapes Kumar Singh, Adv.
	Mr. Mohd. Waquas, Adv.
State of Chhatisgarh	Mr. C.D. Singh, Adv.
	Ms. Sylona Mohapatara, Adv.

Govt. of Puducherry

Mr. V.G. Pragasam, Adv.
Mr. Prabu Ramasubramanian, Adv.

IA No. 5/2014 in
WP(C) no. 833/2013

Mr. Praveen Sehrawat, Adv.
Mr. Priyadarshi Banerjee, Adv.
Mr. Nikhil Nayyar, Adv.
Ms. Anitha Shenoy, Adv.

State of WB

Mr. Soumitra G. Chaudhuri, Adv.
Mr. Anip Sachthey, Adv.

State of Rajasthan

Mr. Shiv Mangal Sharma, AAG
Ms. Abhinandini Sharma, Adv.
Mr. Nishit Agrawal, Adv.
Ms. Anjali Chauhan, Adv.
Mr. Shrey Kapoor, Adv.
Mr. Saurabh Rajpal, Adv.
Mr. Milind Kumar, Adv.
Ms. Ruchi Kohli, Adv.
Mr. Aniruddha P. Mayee, Adv.
Mr. Garvesh Kabra, Adv.

State of Gujarat

Ms. Hemantika Wahi, Adv.
Ms. Jesal Wahi, Adv.
Ms. Vinakshi Kadan, Adv.
Mr. Saikrishna Rajagopal, Adv.
Mr. Arjun Ranganathan, Adv.
Ms. Julien George, Adv.
Ms. C. K. Sucharita, Adv.
Mr. Kamal Mohan Gupta, Adv.
Mr. Dinkar Kalra, Adv.
Mr. Amit Sharma, Adv.
Mr. T.G. Narayan Nair, Adv.

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UPON HEARING the Counsel The Court made the following

O R D E R

10.30 a.m.

By a reasoned order, the matters are referred to a Bench of appropriate strength. Having regard to importance of the matter, it is desirable that the matter be heard at the earliest.

2.00 p.m.

After the matter was referred for decision by a larger Bench, the learned counsel for the petitioners prayed for further interim orders. The last interim order in force is the order of this Court dated 23.9.2013 which reads as follows:

".... All the matters require to be heard finally. List all matters for final hearing after the Constitution Bench is over. In the meanwhile, no person should suffer for not getting the Aadhaar card inspite of the fact that some authority had issued a circular making it mandatory and when any person applies to get the Aadhaar card voluntarily, it may be checked whether that person is entitled for it under the law and it should not be given to any illegal immigrant."

It was submitted by Shri Shyam Divan, learned counsel for the petitioners that the petitioners having pointed out a serious breach of privacy in their submissions, preceding the reference, this Court may grant an injunction restraining the authorities from proceeding further in the matter of obtaining biometrics etc. for an Aadhaar card. Shri Shyam Divan submitted that the biometric information of an individual can be circulated to other authorities or corporate bodies which, in turn can be used by them for commercial exploitation and, therefore, must be stopped.

The learned Attorney General pointed out, on the other hand, that this Court has at no point of time, even while making the interim order dated 23.9.2013 granted an injunction restraining

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the Unique Identification Authority of India from going ahead and obtaining biometric or other information from a citizen for the purpose of a Unique Identification Number, better known as "Aadhaar card". It was further submitted that the respondents have gone ahead with the project and have issued Aadhaar cards to about 90% of the population. Also that a large amount of money has been spent by the Union Government on this project for issuing Aadhaar cards and that in the circumstances, none of the well-known considerations for grant of injunction are in favour of the petitioners.

The learned Attorney General stated that the respondents do not share any personal information of an Aadhaar card holder through biometrics or otherwise with any other person or authority. This statement allays the apprehension for now, that there is a widespread breach of privacy of those to whom an Aadhaar card has been issued. It was further contended on behalf of the petitioners that there still is breach of privacy. This is a matter which need not be gone into further at this stage.

The learned Attorney General has further submitted that the Aadhaar card is of great benefit since it ensures an effective implementation of several social benefit schemes of the Government like MGNREGA, the distribution of food, ration and kerosene through PDS system and grant of subsidies in the distribution of LPG. It was, therefore, submitted that restraining the respondents from issuing further Aadhaar cards or fully utilising the existing Aadhaar cards for the social schemes of the Government should be allowed.

The learned Attorney General further stated that the respondent Union of India would ensure that Aadhaar cards would only be issued on a consensual basis after informing the public at large about the fact that the preparation of Aadhaar card involving the parting of biometric information of the individual, which shall however not be used for any purpose other than a social benefit schemes.

Having considered the matter, we are of the view that the balance of interest would be best served, till the matter is finally decided by a larger Bench if the Union of India or the UIDA proceed in the following manner:

1. The Union of India shall give wide publicity in the electronic and print media including radio and television networks that it is not mandatory for a citizen to obtain an Aadhaar card;
2. The production of an Aadhaar card will not be condition for obtaining any benefits otherwise due to a citizen;
3. The Unique Identification Number or the Aadhaar card will not be used by the respondents for any purpose other than the PDS Scheme and in particular for the purpose of distribution of foodgrains, etc. and cooking fuel, such as kerosene. The Aadhaar card may also be used for the purpose of the LPG Distribution Scheme;
4. The information about an individual obtained by the Unique Identification Authority of India while issuing an Aadhaar card shall not be used for any other purpose, save as above, except as may be directed by a Court for the purpose of criminal investigation.

Ordered accordingly.

(DEEPAK MANSUKHANI)

COURT MASTER

(INDU BALA KAPUR)

COURT MASTER

(Three signed reportable Orders are placed on the file)

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REPORTABLE
IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

WRIT PETITION (CIVIL) NO.494 OF 2012

Justice K.S. Puttaswamy (Retd.) & Another ... Petitioners

Versus

Union of India & Others ... Respondents

WITH

TRANSFERRED CASE (CIVIL) NO.151 OF 2013

TRANSFERRED CASE (CIVIL) NO.152 OF 2013

WRIT PETITION (CIVIL) NO.829 OF 2013

WRIT PETITION (CIVIL) NO.833 OF 2013

WRIT PETITION (CIVIL) NO.932 OF 2013

TRANSFER PETITION (CIVIL) NO.312 OF 2014

TRANSFER PETITION (CIVIL) NO.313 OF 2014

WRIT PETITION (CIVIL) NO.37 OF 2015

WRIT PETITION (CIVIL) NO.220 OF 2015

TRANSFER PETITION (CIVIL) NO.921 OF 2015

CONTEMPT PETITION (CIVIL) NO.144 OF 2014 IN WP(C) 494/2012

CONTEMPT PETITION (CIVIL) NO.470 OF 2015 IN WP(C) 494/2012

ORDER

1. In this batch of matters, a scheme propounded by the Government of India popularly known as "Aadhaar Card Scheme" is under attack on various counts. For the purpose of this order, it is not necessary for us to go into the details of the nature of the scheme

Signature Not Verified
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Deepak Maheshwari
Date: 2015.04.11
17:20:17
Reason:

the various counts on which the scheme is attacked. Suffice it to say that under the said scheme the Government of India is collecting and compiling both the demographic and biometric data of the residents of this country to be used for various purposes, the details of which are not relevant at present.

2. One of the grounds of attack on the scheme is that the very collection of such biometric data is violative of the "right to privacy". Some of the petitioners assert that the right to privacy is implied under Article 21 of the Constitution of India while other petitioners assert that such a right emanates not only from Article 21 but also from various other articles embodying the fundamental rights guaranteed under Part-III of the Constitution of India.

3. When the matter was taken up for hearing, Shri Mukul Rohatgi, learned Attorney General made a submission that in view of the judgments of this Court in *M.P. Sharma & Others v. Satish Chandra & Others*, AIR 1954 SC 300 and *Kharak Singh v. State of U.P. & Others*, AIR 1963 SC 1295, (decided by Eight and Six Judges respectively) the legal position regarding the existence of the fundamental right to privacy is doubtful. Further, the learned Attorney General also submitted that in a catena of decisions of this Court rendered subsequently, this Court referred to "right to privacy", contrary to the judgments in the abovementioned cases which resulted

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a jurisprudentially impermissible divergence of judicial opinions.

"A power of search and seizure is in any system of jurisprudence an overriding power of the State for the protection of social security and that power is necessarily regulated by law. When the Constitution makers have thought fit not to subject such regulation to constitutional limitations **by recognition of a fundamental right to privacy**, analogous to the American Fourth Amendment, **we have no justification to import it, into a totally different fundamental right, by some process of strained construction.** [See: M.P. Singh & Others v. Satish Chandra & Others, AIR 1954 SC 300, page 306 para 18]

"... Nor do we consider that Art. 21 has any relevance in the context as was sought to be suggested by learned counsel for the petitioner. As already pointed out, **the right of privacy is not a guaranteed right under our Constitution** and therefore the attempt to ascertain the movement of an individual which is merely a manner in which privacy is invaded is not an infringement of a fundamental right guaranteed by Part III." [See: Kharak Singh v. State of U.P. & Others, AIR 1963 SC 1295, page 1303 para 20]

[Emphasis supplied]

4. Learned Attorney General submitted that such impermissible divergence of opinion commenced with the judgment of this Court in **Gobind v. State of M.P. & Another**, (1975) 2 SCC 148, which formed the basis for the subsequent decision of this Court wherein the "right to privacy" is asserted or at least referred to. The most important of such cases are **R. Rajagopal & Another v. State of Tamil Nadu & Others**, (1994) 6 SCC 632 (popularly known as Auto Shanker's case) and **People's Union for Civil Liberties (PUCL) v. Union of India & Another**, (1997) 1 SCC 301.

5. All the judgments referred to above were rendered by smaller Benches of two or three Judges.

6. Shri K.K. Venugopal, learned senior counsel appearing for one of

respondents submitted that the decision of this Court in **Gobind** (*supra*) is not consistent with the decisions of this Court in **M.P. Sharma** and **Kharak Singh**. He submitted that such divergence is also noticed by the academicians, Shri F.S. Nariman, Senior Advocate of this Court and Shri A.M. Bhattacharjee¹, Former Chief Justice, High Court at Calcutta and High Court at Bombay.

7. Therefore, it is submitted by the learned Attorney General and Shri Venugopal that to settle the legal position, this batch of matters is required to be heard by a larger Bench of this Court as these matters throw up for debate important questions – (i) whether there is any “right to privacy” guaranteed under our Constitution. (ii) If such a right exists, what is the source and what are the contours of such a right as there is no express provision in the Constitution adumbrating the right to privacy. It is therefore submitted that these batch of matters are required to be heard and decided by a larger bench of at least five Judges in view of the mandate contained under Article 145(3)² of the Constitution of India.

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A.M. Bhattacharjee, *Equality, Liberty & Property under the Constitution of India*, (Eastern Law House, New Delhi, 1997)

² Article 145(3). The minimum number of Judges who are to sit for the purpose of deciding any case involving a substantial question of law as to the interpretation of this Constitution or for the purpose of hearing any reference under Article 143 shall be five:
Provided that, where the Court hearing an appeal under any of the provisions of this chapter other than Article 132 consists of less than five Judges and in the course of the hearing of the appeal the Court is satisfied that the appeal involves a substantial question of law as to the interpretation of this Constitution the determination of which is

On behalf of the petitioners Shri Gopal Subramaniam and Shri Shyam Divan, learned senior counsel very vehemently opposed the suggestion that this batch of matters is required to be heard by a larger bench. According to them:

- (i) The conclusions recorded by this Court in **R. Rajagopal** and **PUCL** are legally tenable for the reason that the observations made in **M.P. Sharma** regarding the absence of right to privacy under our Constitution are not part of ratio decidendi of that case and, therefore, do not bind the subsequent smaller Benches.
- (ii) Coming to the case of **Kharak Singh**, majority in **Kharak Singh** did hold that the right of a person not to be disturbed at his residence by the State and its officers is recognized to be a part of a fundamental right guaranteed under Article 21 which is nothing but an aspect of privacy. The observation in para 20 of the majority judgment at best can be construed only to mean that there is no fundamental right of privacy against the State's authority to keep surveillance on the activities of a person. Even such a conclusion cannot be good law any more in view of the express declaration made by a seven-Judge bench decision of this Court in **Maneka Gandhi v. Union of India & Another**, (1978) 1 SCC 248³.

necessary for the disposal of the appeal, such Court shall refer the question for opinion to a Court constituted as required by this clause for the purpose of deciding any case involving such a question and shall on receipt of the opinion dispose of the appeal in conformity with such opinion

³ Para 5. ... It was in **Kharak Singh v. State of U.P.**, AIR 1963 SC 1295 that the question as to the proper scope and meaning of the expression 'personal liberty' came up pointedly for consideration for the first time before this Court. The

They further argued that both *M.P. Sharma (supra)* and *Kharak Singh (supra)* came to be decided on an interpretation of the

Constitution based on the principles expounded in *A.K. Gopalan v. State of Madras*, AIR 1950 SC 27. Such principles propounded by *A.K. Gopalan* themselves came to be declared wrong by a larger Bench of this Court in *Rustom Cawasjee Cooper v. Union of India*, (1970) 1 SCC 248. Therefore, there is no need for the instant batch of matters to be heard by a larger Bench.

9. It is true that *Gobind (supra)* did not make a clear declaration that there is a right to privacy flowing from any of the fundamental rights guaranteed under Part-III of the Constitution of India, but observed that "Therefore, even assuming that the right to personal liberty, the right to move freely throughout the territory of India and the freedom of speech create an independent right of privacy as an emanation from them which one can characterize as a fundamental right, we do not think that the right is absolute".

This Court proceeded to decide the case on such basis.

10. However, the subsequent decisions in *R. Rajagopal (supra)* and

majority of the Judges took the view "that 'personal liberty' is used in the article as a compendious term to include within itself all the varieties of rights which go to make up the 'personal liberties' of man other than those dealt with in the several clauses of Article 19(1). In other words, while Article 19(1) deals with particular species or attributes, of that freedom, 'personal liberty' in Article 21 takes in and comprises the residue". The minority judges, however, disagreed with this view taken by the majority and explained their position in the following words: "No doubt the expression 'personal liberty' is a comprehensive one and the right to move freely is an attribute of personal liberty. It is said that the freedom to move freely is carved out of personal liberty and, therefore, the expression 'personal liberty' in Article 21 excludes that attribute. In our view, this is not a correct approach. Both are independent fundamental rights, though there is overlapping. There is no question of one being carved out of another. The fundamental right of life and personal liberty has many attributes and some of them are found in Article 19. If a person's fundamental right under Article 21 is infringed, the State can rely upon a law to sustain the action, but that cannot be a complete answer unless the said law satisfies the test laid down in Article 19(2) so far as the attributes covered by Article 19(1) are concerned". There can be no doubt that in view of the decision of this Court in *R. C. Cooper v. Union of India*, (1970) 2 SCC 298 the minority view must be regarded as correct and the majority view must be held to have been overruled.

PUCL (*supra*), the Benches were more categoric in asserting the existence of "right to privacy". While **R. Rajagopal's case**⁴ held that the "right to privacy" is implicit under Article 21 of the Constitution, **PUCL's case** held that the "right to privacy" insofar as it pertains to speech is part of fundamental rights under Articles 19(1)(a) and 21 of the Constitution⁵.

11. Elaborate submissions are made at the bar by the learned counsel for the petitioners to demonstrate that world over in all the countries where Anglo-Saxon jurisprudence is followed, 'privacy' is recognised as an important aspect of the liberty of human beings. It is further submitted that it is too late in the day for the Union of India to argue that the Constitution of India does not recognise privacy as an aspect of the liberty under Article 21 of the Constitution of India. At least to the extent that the right of a person to be secure in his house and not to be disturbed unreasonably by the State or its officers is

⁴ Para 9. "Right to privacy is not enumerated as a fundamental right in our Constitution but has been inferred from Article 21."

⁵ Para 18. "The right to privacy — by itself — has not been identified under the Constitution. As a concept it may be too broad and moralistic to define it judicially. Whether right to privacy can be claimed or has been infringed in a given case would depend on the facts of the said case. But the right to hold a telephone conversation in the privacy of one's home or office without interference can certainly be claimed as "right to privacy". Conversations on the telephone are often of an intimate and confidential character. Telephone conversation is a part of modern man's life. It is considered so important that more and more people are carrying mobile telephone instruments in their pockets. Telephone conversation is an important facet of a man's private life. Right to privacy would certainly include telephone conversation in the privacy of one's home or office. Telephone-tapping would, thus, infract Article 21 of the Constitution of India unless it is permitted under the procedure established by law."

19. Right to freedom of speech and expression is guaranteed under Article 19(1)(a) of the Constitution. This freedom means the right to express one's convictions and opinions freely by word of mouth, writing, printing, picture, or in any other manner. When a person is talking on telephone, he is exercising his right to freedom of speech and expression. Telephone-tapping unless it comes within the grounds of restrictions under Article 19(2) would infract Article 19(1)(a) of the Constitution."

expressly recognized and protected in **Kharak Singh** (*supra*) though the majority did not describe that aspect of the liberty as a right of privacy, it is nothing but the right of privacy.

12. We are of the opinion that the cases on hand raise far reaching questions of importance involving interpretation of the Constitution. What is at stake is the amplitude of the fundamental rights including that precious and inalienable right under Article 21. If the observations made in **M.P. Sharma** (*supra*) and **Kharak Singh** (*supra*) are to be read literally and accepted as the law of this country, the fundamental rights guaranteed under the Constitution of India and more particularly right to liberty under Article 21 would be denuded of vigour and vitality. At the same time, we are also of the opinion that the institutional integrity and judicial discipline require that pronouncement made by larger Benches of this Court cannot be ignored by the smaller Benches without appropriately explaining the reasons for not following the pronouncements made by such larger Benches. With due respect to all the learned Judges who rendered the subsequent judgments - where right to privacy is asserted or referred to their Lordships concern for the liberty of human beings, we are of the humble opinion that there appears to be certain amount of apparent unresolved contradiction in the law declared by this Court.

13. Therefore, in our opinion to give a quietus to the kind of

Controversy raised in this batch of cases once for all, it is better that the ratio decidendi of **M.P. Sharma** (*supra*), and **Kharak Singh** (*supra*) is scrutinized and the jurisprudential correctness of the subsequent decisions of this Court where the right to privacy is either asserted or referred be examined and authoritatively decided by a Bench of appropriate strength.

14. We, therefore, direct the Registry to place these matters before the Hon'ble the Chief Justice of India for appropriate orders.

.....J.
(J. Chelameswar)

.....J.
(S.A. Bobde)

.....J.
(C. Nagappan)

New Delhi
August 11, 2015

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

WRIT PETITION (CIVIL) NO.494 OF 2012

Justice K.S. Puttaswamy (Retd.) & Another ...Petitioners

Versus

Union of India & Others

... Respondents

WITHTRANSFERRED CASE (CIVIL) NO.151 OF 2013TRANSFERRED CASE (CIVIL) NO.152 OF 2013WRIT PETITION (CIVIL) NO.829 OF 2013WRIT PETITION (CIVIL) NO.833 OF 2013WRIT PETITION (CIVIL) NO.932 OF 2013TRANSFER PETITION (CIVIL) NO.312 OF 2014TRANSFER PETITION (CIVIL) NO.313 OF 2014WRIT PETITION (CIVIL) NO.37 OF 2015WRIT PETITION (CIVIL) NO.220 OF 2015TRANSFER PETITION (CIVIL) NO.921 OF 2015CONTEMPT PETITION (CIVIL) NO.144 OF 2014 IN WP(C) 494/2012CONTEMPT PETITION (CIVIL) NO.470 OF 2015 IN WP(C) 494/2012

ORDER

Having regard to importance of the matter, it is desirable that the matter be heard at the earliest.

.....J.
(J. Chelameswar)

.....J.
(S.A. Bobde)

.....J.
(C. Nagappan)

New Delhi
August 11, 2015

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION
WRIT PETITION (CIVIL) NO.494 OF 2012

Justice K.S. Puttaswamy (Retd.) & Another ... Petitioners

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WITH

TRANSFERRED CASE (CIVIL) NO.151 OF 2013

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CONTEMPT PETITION (CIVIL) NO.144 OF 2014 IN WP(C) 494/2012

CONTEMPT PETITION (CIVIL) NO.470 OF 2015 IN WP(C) 494/2012

INTERIM ORDER

After the matter was referred for decision by a larger Bench, the learned counsel for the petitioners prayed for further interim orders. The last interim order in force is the order of this Court dated 23.9.2013 which reads as follows:-

“

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All the matters require to be heard finally. List all matters for final hearing after the Constitution Bench is over.

In the meanwhile, no person should suffer for not getting the Aadhaar card in spite of the fact that some authority had issued a circular making it mandatory and when any person applies to get the Aadhaar card voluntarily, it may be checked whether that person is entitled for it under the law and it should not be given to any illegal immigrant."

It was submitted by Shri Shyam Divan, learned counsel for the petitioners that the petitioners having pointed out a serious breach of privacy in their submissions, preceding the reference, this Court may grant an injunction restraining the authorities from proceeding further in the matter of obtaining biometrics etc. for an Aadhaar card. Shri Shyam Divan submitted that the biometric information of an individual can be circulated to other authorities or corporate bodies which, in turn can be used by them for commercial exploitation and, therefore, must be stopped.

The learned Attorney General pointed out, on the other hand, that this Court has at no point of time, even while making the interim order dated 23.9.2013 granted an injunction restraining the Unique Identification Authority of India from going ahead and obtaining biometric or other information from a citizen for the purpose of a Unique Identification Number, better known as "Aadhaar card". It was further submitted that the respondents have gone ahead with the project and have issued Aadhaar cards to

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about 90% of the population. Also that a large amount of money has been spent by the Union Government on this project for issuing Aadhaar cards and that in the circumstances, none of the well-known considerations for grant of injunction are in favour of the petitioners.

The learned Attorney General stated that the respondents do not share any personal information of an Aadhaar card holder through biometrics or otherwise with any other person or authority. This statement allays the apprehension for now, that there is a widespread breach of privacy of those to whom an Aadhaar card has been issued. It was further contended on behalf of the petitioners that there still is breach of privacy. This is a matter which need not be gone into further at this stage.

The learned Attorney General has further submitted that the Aadhaar card is of great benefit since it ensures an effective implementation of several social benefit schemes of the Government like MGNREGA, the distribution of food, ration and kerosene through PDS system and grant of subsidies in the distribution of LPG. It was, therefore, submitted that restraining the respondents from issuing further Aadhaar cards or fully utilising the existing Aadhaar cards for the social schemes of the Government should be allowed.

The learned Attorney General further stated that the

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respondent Union of India would ensure that Aadhaar cards would only be issued on a consensual basis after informing the public at large about the fact that the preparation of Aadhaar card involving the parting of biometric information of the individual, which shall however not be used for any purpose other than a social benefit schemes.

Having considered the matter, we are of the view that the balance of interest would be best served, till the matter is finally decided by a larger Bench if the Union of India or the UIDA proceed in the following manner:-

1. The Union of India shall give wide publicity in the electronic and print media including radio and television networks that it is not mandatory for a citizen to obtain an Aadhaar card;
2. The production of an Aadhaar card will not be condition for obtaining any benefits otherwise due to a citizen;
3. The Unique Identification Number or the Aadhaar card will not be used by the respondents for any purpose other than the PDS Scheme and in particular for the purpose of distribution of foodgrains, etc. and cooking fuel, such as kerosene. The Aadhaar card may also be used for the purpose of the LPG Distribution Scheme;
4. The information about an individual obtained by the Unique

Identification Authority of India while issuing an Aadhaar card shall not be used for any other purpose, save as above, except as may be directed by a Court for the purpose of criminal investigation.

Ordered accordingly.

.....J.
(J. Chelameswar)

.....J.
(S.A. Bobde)

.....J.
(C. Nagappan)

New Delhi
August 11, 2015

// TRUE COPY //

ITEM NO.501

COURT NO.1

SECTION PIL(W)

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

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Writ Petition(s) (Civil) No(s). 494/2012

JUSTICE K.S. PUTTASWAMY (RETD) & ANR

Petitioner(s)

VERSUS

UNION OF INDIA & ORS.

Respondent(s)

(With appln.(s) for interim relief and appln.(s) for
impleadment/directions and appln.(s) for impleadment and appln.(s)
for impleadment and appln.(s) for impleadment and appln.(s) for
impleadment , permission to file addl.documents and permission to
file addl.affidavit and Office Report)

WITH T.C.(C) No. 151/2013

(With appln.(s) for modification of court's order and appln.(s) for
impleadment as party respondent)

T.C.(C) No. 152/2013

With W.P.(C) No. 829/2013

(With appln.(s) for interim relief and appln.(s) for
impleadment/directions and appln.(s) for impleadment and appln.(s)
for impleadment and appln.(s) for impleadment and appln.(s) for
impleadment and Office Report)

W.P.(C) No. 833/2013

(With appln.(s) for permission to file additional documents and
appln.(s) for impleadment and appln.(s) for directions and appln.
(s) for impleadment and appln.(s) for impleadment and Office
Report)

W.P.(C) No. 932/2013

(With appln.(s) for clarification of court's order and appln.(s)
for directions and appln.(s) for interim directions and Office
Report)

T.P.(C) No. 312/2014

(With Office Report)

T.P.(C) No. 313/2014

(With Office Report)

Digitally signed by
Rishma Venkata Ganil
Date: 2015.06.16
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Reason:

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W.P.(C) No. 37/2015

(With appln.(s) for permission to file additional documents and appln.(s) for interim stay and appln.(s) for permission to file additional documents and appln.(s) for directions and appln.(s) for impleadment and Office Report)

W.P.(C) No. 220/2015

(With appln.(s) for directions and Office Report)

T.P.(C) No. 921/2015

(With Office Report)

CONMT.PET.(C) No. 144/2014 In W.P.(C) No. 494/2012

(With appln.(s) for directions and appln.(s) for directions and Office Report)

CONMT.PET.(C) No. 470/2015 In W.P.(C) No. 494/2012

(With appln.(s) for exemption from filing O.T. and Office Report)

SLP(Crl) No. 2524/2014

(With Office Report)

CONMT.PET.(C) No. 674/2015 In W.P.(C) No. 829/2013

(With Office Report)

Date : 15/10/2015 These petitions/cases were called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE M.Y. EQBAL
HON'BLE MR. JUSTICE C. NAGAPPAN
HON'BLE MR. JUSTICE ARUN MISHRA
HON'BLE MR. JUSTICE AMITAVA ROY

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For M/s. K.J. John & Co., Adv.

WP(C) No. 37/2015 Mr. Gopal Subramaniam, Sr. Adv.
Ms. Aishwarya Bhati, Adv.
Mr. Talha Abdul Rahman, Adv.
Ms. Anusha Ramesh, Adv.
Mr. Prateek Joshi, Adv.
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Mr. Anirban Sen, Adv.
 Mr. Adarsh tiwari, Adv.
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 Mr. Dinesh, Adv.

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 Mr. Aditya Kumar Dubey, Adv.
 Mr. Gaurav Kumar, Adv.

TP(C) No. 151/2013 Mrs. Geetha Kovilan, Adv.
 Mr. P. R. Kovilan, Adv.
 Mr. V. Vasudevan, Adv.

TP(C) No. 921/2015 Ms. Pinky Anand, ASG
 Mr. S. S. Rawat, Adv.
 Mr. D. S. Mahra, Adv.

TC(C) No. 152/2013 Ms. Meenakshi Arora, Sr. Adv.
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 Mr. Mohit Singh, Adv.
 Mr. Vijay Kumar, Adv.

for Mr. Amit Meharia, Adv.
 Mr. Dhritiman Das, Adv.
 M/s. Meharia & Company, Advs.

WP(C) no. 932/2013 Dr. Abhishek Atrey, Adv.
 CC(C) no. 470/2015 Mr. Sella Kumar, Adv.

Ms. Nitya Ramakrishnan, Adv.
 Mr. Shadan Farasat, Adv.
 Ms. Guneet Kaur, Adv.
 Ms. Rita Singh, Adv.
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 Mr. Vakul Sharma, Adv.

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 Ms. Saudamini Sharma, Adv.
 Ms. Snibha Mehra, Adv.
 Mr. Karan Seth, Adv.
 Mr. Rishabh Jain, Adv.
 Mr. D.S. Mahra, Adv.

SEBI

Mr. Tushar Mehta, ASG
 Mr. Avinash Tripathi, Adv.
 Mr. Harish Pandey, Adv.

I.A.No.31/2015 in
 W.P. (C) NO.494/12

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 Ms. Palak Chadha, Adv.

IA no. 11/2014

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 Ms. Savita Singh, Adv.
 Ms. Nidhi Bhalla, Adv.

State of Telangana

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 Mr. Krishna Kumar Singh, Adv.

RBI

Mr. Jayant Bhushan, Sr. Adv.
 Mr. Kuldeep S. Parihar, Adv.
 Mr. H.S. Parihar, Adv.

State of Goa

Mr. Ninad Laud, Adv.
 Mr. Karan Mathur, Adv.
 Mr. Jayant Mohan, Adv.

State of Nagaland

Ms. K. Enatoli Sema, Adv.
 Mr. Edward Belho, Adv.
 Mr. Amit Kumar Singh, Adv.

A&N Administration

Mr. K.V. Jagdishvaran, Adv.
 Ms. G. Indira, Adv.

State of Assam

Mr. Navnit Kumar, Adv.
 Ms. Deepika Ghatowor, Adv.
 For M/s. Corporate Law Group, Adv.

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 Mr. Suryanarayana Singh, Sr. AAG
 Mr. Varinder Kumar Sharma, Adv.
 Mr. Sumeet Prakash, Adv.
 Ms. Pragati Neekhara, Adv.

State of Maharashtra Mr. Nachiketa Joshi, Adv.
 Mr. Nishant Katneshwarkar, Adv.

I.A.NO.5/2014 in Mr. Gopal Subramaniam, Sr. Adv.
 W.P. (C) NO.833/2013 Mr. Priyadarshi Banerjee, Adv.
 Mr. Praveen Sehrawat, Adv.
 Mr. Saransh Jain, Adv.
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 Ms. R. Shase, Adv.

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 Mr. Parijat Sinha, Adv.

State of Manipur Mr. Sapam Biswajit Meitei, Adv.
 Mr. Z.H. Isaac Haiding, Adv.
 Mr. S. Vijayanand Sharma, Adv.
 Mr. B. Khusbanshi, Adv.
 Mr. Ashok Kumar Singh, Adv.

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Mr. Gopal Singh, Adv.

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Ms. Beena Victor, Adv.

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Mr. J.S. Chhabra, Adv.
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Mr. Tapes Kumar Singh, Adv.
Mr. Mohd. Waquas, Adv.

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Mr. Prabu Ramasubramanian, Adv.

IA No. 5/2014 in
WP(C) no. 833/2013 Mr. Praveen Sehrawat, Adv.
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State of Karnataka Ms. Anitha Shenoy, Adv.
Ms. Maitreyee Mishra, Adv.

State of WB Mr. Soumitra G. Chaudhuri, Adv.
Mr. Anip Sachthey, Adv.

State of Rajasthan Mr. Nitish Bagri, Adv.
Mr. Divyesh Maheshwari, Adv.
Mr. Ajay Choudhary, Adv.
Mr. Gaurav Chaudhary, Adv.

Ms. Mumtaz Bhalla, Adv.
Mr. Abhay Kumar, Adv.

Mr. Aniruddha P. Mayee, Adv.

I.A.Nos.9 & 10/2013 Mr. Garvesh Kabra, Adv.
In WP(C)NO.494/12 Ms. Pooja Kabra, Adv.

State of Gujarat Ms. Hemantika Wahi, Adv.
Ms. Jesal Wahi, Adv.
Ms. Puja Singh, Adv.

Ms. C. K. Sucharita, Adv.

Mr. Kamal Mohan Gupta, Adv.

Mr. Dinkar Kalra, Adv.

Mr. Amit Sharma, Adv.

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Mr. Samar Vijay Singh, Adv.

State of U.P. Mr. Gaurav Bhatia, AAG
Mr. Adarsh Upadhyay, Adv.
Mr. Gaurav Srivastava, Adv.

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Ms. Swati Bhushan Sharma, Adv.
Mr. Mishra Saurabh, Adv.

I.A.No.24 & 25/15 Mr. K. Ramamoorthy, Sr. Adv.
In WP(C)No.494/12 Mr. Dipak K. Nag, Adv.
Mr. Parmanand Gaur, Adv.
Ms. Apurva Upamanyu, Adv.

I.A.Nos.22-23/15
In W.P.(C)NO.494/2012 Mr. Sanjay Kapur, Adv.
Mr. Anmol Chandan, Adv.

Mr. Anoop J. Bhambhani, Sr. Adv.
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Mr. Chandra Nand Jha, Adv.

Intervenor Mr. Saikrishna Rajagopal, Adv.
Mr. Juhen George, Adv.
Mr. Arjun Ranathan, Adv.

Pen. Fun. Reg. & D. A. Mr. R. Sudhinder, Adv.
 Ms. Ekta Bhasin, Adv.
 Mr. Ashok Mathur, Adv.

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I.A. NO. 26/15

Mr. Shiv Mangal Sharma, Adv.
 Mr. Ankit Shah, Adv.
 Mr. Puneet Parihar, Adv.
 Mr. Shrey Kapoor, Adv.
 Mr. Nishit Agrawal, Adv.
 Ms. Anjali Chauhan, Adv.
 Mr. Sitesh Narayan Singh, Adv.
 Mr. Saurabh Rajpal, Adv.
 Mr. Avanish Rathi, Adv.
 Mr. Vivek Ranjan Mohanty, Adv.
 Mr. Adhiraj Singh Rajawat, Adv.

Mr. Shanti Mukharjee, Adv.
 Mr. Manoj K. Mishra, Adv.
 Ms. Shreya Mukharjee, Adv.
 Mr. Sandeep Kr. Dwivedi, Adv.
 Mr. Shivam Verma Adv.

Mr. Nikhil Nayyar, Adv.

Mr. Ranjan Mukherjee, Adv.

Ms. Anitha Shenoy, Adv.

Ms. Ruchi Kohli, Adv.

Mr. Dinkar Kalra, Adv.

Mr. Mohit D. Ram, Adv.

UPON hearing the counsel the Court made the following

O R D E R

All the applications for intervention and impleadment be heard along with the respective main matters.

Application(s) filed by the Union of India/UIDAI is/are disposed of.

Since there is some urgency in the matter, we request the learned Chief Justice of India to constitute a Bench for final hearing of these matters at the earliest.

Ordered accordingly.

(G.V.Ramana)

AR-cum-PS

(Vinod Kulvi)

Asstt.Registrar

(Signed order is placed on the file)

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION

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WRIT PETITION (C) NO. 494 OF 2012

JUSTICE K.S. PUTTASWAMY
(RETD) & ANR.

.. PETITIONER(S)

VERSUS

UNION OF INDIA & ORS.

.. RESPONDENT(S)

T.C. (C) No. 151/2013

T.C. (C) No. 152/2013

WRIT PETITION (C) No. 829/2013

WRIT PETITION (C) No. 833/2013

WRIT PETITION (C) No. 932/2013

TRANSFER PETITION (C) No. 312/2014

TRANSFER PETITION (C) No. 313/2014

WRIT PETITION (C) No. 37/2015

WRIT PETITION (C) No. 220/2015

TRANSFER PETITION (C) No. 921/2015

CONMT. PET. (C) No. 144/2014

In

WRIT PETITION (C) No. 494/2012

CONMT.PET.(C) No. 470/2015

In

WRIT PETITION(C) No. 494/2012

SPECIAL LEAVE PETITION (CRL.) No. 2524/2014

CONMT.PET.(C) No. 674/2015

In

WRIT PETITION(C) No. 829/2013

O R D E R

1. This Bench is constituted only for the purpose of deciding the applications filed by the Union of India seeking certain clarification/modification in the orders passed by a Bench of three learned Judges of this Court dated 11.08.2015.
2. We have heard Shri Mukul Rohtagi, learned Attorney General for India, Shri Shyam Divan, Shri Soli Sorabjee and Shri Gopal Subramaniam, learned senior counsels *in extenso*.
3. After hearing the learned Attorney General for India and other learned senior counsels, we are of the view that in paragraph 3 of the Order dated 11.08.2015, if we add, apart from the other two Schemes, namely, P.D.S. Scheme and the L.P.G. Distribution Scheme, the Schemes like The Mahatma Gandhi National Rural Employment Guarantee Scheme

(MGNREGS), National Social Assistance Programme (Old Age Pensions, Widow Pensions, Disability Pensions) Prime Minister's Jan Dhan Yojana (PMJDY) and Employees' Provident Fund Organisation (EPFO) for the present, it would not dilute earlier order passed by this Court. Therefore, we now include the aforesaid Schemes apart from the other two Schemes that this Court has permitted in its earlier order dated 11.08.2015.

4. We impress upon the Union of India that it shall strictly follow all the earlier orders passed by this Court commencing from 23.09.2013.

5. We will also make it clear that the Aadhaar card Scheme is purely voluntary and it cannot be made mandatory till the matter is finally decided by this Court one way or the other.

6. All the applications for intervention and impleadment be heard along with the respective main matters.

7. Application(s) for modification/ clarification filed by Union of India/UIDAI is/are disposed of.

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8. Since there is some urgency in the matter, we request the learned Chief Justice of India to constitute a Bench for final hearing of these matters at the earliest.

Ordered accordingly.

.....CJI
[H.L. DATTU]

.....J.
[M.Y. EQBAL]

.....J.
[C. NAGAPPAN]

.....J.
[ARUN MISHRA]

.....J.
[AMITAVA ROY]

NEW DELHI,
OCTOBER 15, 2015.

// TRUE COPY //

The Gazette Of India

EXTRAORDINARY
PART II—Section 1
PUBLISHED BY AUTHORITY

No. 19] NEW DELHI, SATURDAY, MARCH 26, 2016/CHAITRA 6, 1938 (Saka)

Separate paging is given to this Part in order that it may be filed as a separate compilation.

MINISTRY OF LAW AND JUSTICE

(Legislative Department)

New Delhi, the 26th March, 2016/Chaitra 6, 1938 (Saka)

The following Act of Parliament received the assent of the President on the 25th March, 2016, and is hereby published for general information:—

**THE AADHAAR (TARGETED DELIVERY OF FINANCIAL AND
OTHER SUBSIDIES, BENEFITS AND SERVICES) ACT, 2016**

NO. 18 OF 2016

[25th March, 2016.

An Act to provide for, as a good governance, efficient, transparent, and targeted delivery of subsidies, benefits and services, the expenditure for which is incurred from the Consolidated Fund of India, to individuals residing in India through assigning of unique identity numbers to such individuals and for matters connected therewith or incidental thereto. BE it enacted by Parliament in the Sixty-seventh Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

1. (1) This Act may be called the Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016.

(2) It shall extend to the whole of India except the State of Jammu and Kashmir and save as otherwise provided in this Act, it shall also apply to any offence or contravention there under committed outside India by any person.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint; and different dates may, be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the commencement of that provision.

2. In this Act, unless the context otherwise requires,—

(a) "Aadhaar number" means an identification number issued to an individual under subsection (3) of section 3;

(b) "Aadhaar number holder" means an individual who has been issued an Aadhaar number under this Act;

(c) "authentication" means the process by which the Aadhaar number alongwith demographic information or biometric information of an individual is submitted to the Central Identities Data Repository for its verification and such Repository verifies the correctness, or the lack thereof, on the basis of information available with it;

(d) "authentication record" means the record of the time of authentication and identity of the requesting entity and the response provided by the Authority thereto;

(e) "Authority" means the Unique Identification Authority of India established under sub-section (1) of section 11;

(f) "benefit" means any advantage, gift, reward, relief, or payment, in cash or kind, provided to an individual or a group of individuals and includes such other benefits as may be notified by the Central Government;

(g) "biometric information" means photograph, finger print, iris scan, or such other biological attributes of an individual as may be specified by regulations;

(h) "Central Identities Data Repository" means a centralised database in one or more locations containing all Aadhaar numbers issued to Aadhaar number holders along with the corresponding demographic information and biometric information of such individuals and other information related thereto;

(i) "Chairperson" means the Chairperson of the Authority appointed under section 12;

(j) "core biometric information" means finger print, iris scan, or such other biological attribute of an individual as may be specified by regulations;

(k) "demographic information" includes information relating to the name, date of birth, address and other relevant information of an individual, as may be specified by regulations for the purpose of issuing an Aadhaar number, but shall not include race, religion, caste, tribe, ethnicity, language, records of entitlement, income or medical history;

(l) "enrolling agency" means an agency appointed by the Authority or a Registrar, as the case may be, for collecting demographic and biometric information of individuals under this Act;

(m) "enrolment" means the process, as may be specified by regulations, to collect demographic and biometric information from individuals by the enrolling agencies for the purpose of issuing Aadhaar numbers to such individuals under this Act;

(n) "identity information" in respect of an individual, includes his Aadhaar number, his biometric information and his demographic information;

(o) "Member" includes the Chairperson and Member of the Authority appointed under section 12;

(p) "notification" means a notification published in the Official Gazette and the expression "notified" with its cognate meanings and grammatical variations shall be construed accordingly;

(q) "prescribed" means prescribed by rules made by the Central Government under this Act;

(r) "records of entitlement" means records of benefits, subsidies or services provided to, or availed by, any individual under any programme;

(s) "Registrar" means any entity, authorised or recognised by the Authority for the purpose of enrolling individuals under this Act;

(t) "regulations" means the regulations made by the Authority under this Act;

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(u) "requesting entity" means an agency or person that submits the Aadhaar number, and demographic information or biometric information, of an individual to the Central Identities Data Repository for authentication;

(v) "resident" means an individual who has resided in India for a period or periods amounting in all to one hundred and eighty-two days or more in the twelve months immediately preceding the date of application for enrolment;

(w) "service" means any provision, facility, utility or any other assistance provided in any form to an individual or a group of individuals and includes such other services as may be notified by the Central Government;

(x) "subsidy" means any form of aid, support, grant, subvention, or appropriation, in cash or kind, to an individual or a group of individuals and includes such other subsidies as may be notified by the Central Government.

CHAPTER II ENROLMENT

3.(1) Every resident shall be entitled to obtain an Aadhaar number by submitting his demographic information and biometric information by undergoing the process of enrolment:

Provided that the Central Government may, from time to time, notify such other category of individuals who may be entitled to obtain an Aadhaar number.

(2) The enrolling agency shall, at the time of enrolment, inform the individual undergoing enrolment of the following details in such manner as may be specified by regulations, namely:—

- " (a) the manner in which the information shall be used;
- (b) the nature of recipients with whom the information is intended to be shared during authentication; and
- (c) the existence of a right to access information, the procedure for making requests for such access, and details of the person or department in-charge to whom such requests can be made.

(3) On receipt of the demographic information and biometric information under sub-section (1), the Authority shall, after verifying the information, in such manner as may be specified by regulations, issue an Aadhaar number to such individual.

4. (1) An Aadhaar number, issued to an individual shall not be re-assigned to any other individual.

(2) An Aadhaar number shall be a random number and bear no relation to the attributes or identity of the Aadhaar number holder:

(3) An Aadhaar number, in physical or electronic form subject to authentication and other conditions, as may be specified by regulations, may be accepted as proof of identity of the Aadhaar number holder for any purpose.

Explanation.— For the purposes of this sub-section, the expression "electronic form" shall have the same meaning as assigned to it in clause (r) of sub-section (1) of section 2 of the Information Technology Act, 2000.

5. The Authority shall take special measures to issue Aadhaar number to women, children, senior citizens, persons with disability, unskilled and unorganised workers, nomadic

tribes or to such other persons who do not have any permanent dwelling house and such other categories of individuals as may be specified by regulations.

6. The Authority may require Aadhaar number holders to update their demographic information and biometric information, from time to time, in such manner as may be specified by regulations, so as to ensure continued accuracy of their information in the Central Identities Data Repository.

CHAPTER III AUTHENTICATION

7. The Central Government or, as the case may be, the State Government may, for the purpose of establishing identity of an individual as a condition for receipt of a subsidy, benefit or service for which the expenditure is incurred from, or the receipt therefrom forms part of, the Consolidated Fund of India, require that such individual undergo authentication, or furnish proof of possession of Aadhaar number or in the case of an individual to whom no Aadhaar number has been assigned, such individual makes an application for enrolment:

Provided that if an Aadhaar number is not assigned to an individual, the individual shall be offered alternate and viable means of identification for delivery of the subsidy, benefit or service.

8. (1) The Authority shall perform authentication of the Aadhaar number of an Aadhaar number holder submitted by any requesting entity, in relation to his biometric information or demographic information, subject to such conditions and on payment of such fees and in such manner as may be specified by regulations:

(2) A requesting entity shall—

(a) unless otherwise provided in this Act, obtain the consent of an individual before collecting his identity information for the purposes of authentication in such manner as may be specified by regulations; and

(b) ensure that the identity information of an individual is only used for submission to the Central Identities Data Repository for authentication.

(3) A requesting entity shall inform, in such manner as may be specified by regulations, the individual submitting his identity information for authentication, the following details with respect to authentication, namely:—

(a) the nature of information that may be shared upon authentication;

(b) the uses to which the information received during authentication may be put by the requesting entity; and

(c) alternatives to submission of identity information to the requesting entity.

(4) The Authority shall respond to an authentication query with a positive, negative or any other appropriate response sharing such identity information excluding any core biometric information.

9. The Aadhaar number or the authentication thereof shall not, by itself, confer any right of, or be proof of, citizenship or domicile in respect of an Aadhaar number holder.

10. The Authority may engage one or more entities to establish and maintain the Central Identities Data Repository and to perform any other functions as may be specified by regulations.

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CHAPTER IV
UNIQUE IDENTIFICATION AUTHORITY OF INDIA

11. (1) The Central Government shall, by notification, establish an Authority to be known as the Unique Identification Authority of India to be responsible for the processes of enrolment and authentication and perform such other functions assigned to it under this Act.

(2) The Authority shall be a body corporate by the name aforesaid, having perpetual succession and a common seal, with power, subject to the provisions of this Act, to acquire, hold and dispose of property, both movable and immovable, and to contract, and shall, by the said name, sue or be sued.

(3) The head office of the Authority shall be in New Delhi.

(4) The Authority may, with the prior approval of the Central Government, establish its offices at other places in India.

12. The Authority shall consist of a Chairperson, appointed on part-time or full-time basis, two part-time Members, and the chief executive officer who shall be Member-Secretary of the Authority, to be appointed by the Central Government.

13. The Chairperson and Members of the Authority shall be persons of ability and integrity having experience and knowledge of at least ten years in matters relating to technology, governance, law, development, economics, finance, management, public affairs or administration.

14. (1) The Chairperson and the Members appointed under this Act shall hold office for a term of three years from the date on which they assume office and shall be eligible for re-appointment:

Provided that no person shall hold office as the Chairperson or Member after he has attained the age of sixty-five years.

(2) The Chairperson and every Member shall, before entering office, make and subscribe to, an oath of office and of secrecy, in such form and in such manner and before such Authority as may be prescribed.

(3) Notwithstanding anything contained in sub-section (1), the Chairperson or Member may—

(a) relinquish his office, by giving in writing to the Central Government, a notice of not less than thirty days; or

(b) be removed from his office in accordance with the provisions of section 15.

(4) The salaries and allowances payable to, and the other terms and conditions of service of, the Chairperson and allowances or remuneration payable to part-time Members shall be such as may be prescribed.

15. (1) The Central Government may remove from office, the Chairperson, or a Member, who—

(a) is, or at any time has been adjudged as insolvent;

(b) has become physically or mentally incapable of acting as the Chairperson or, as the case may be, a Member;

(c) has been convicted of an offence which, in the opinion of the Central Government, involves moral turpitude;

(d) has acquired such financial or other interest as is likely to affect prejudicially his functions as the Chairperson or, as the case may be, a Member; or

(e) has, in the opinion of the Central Government, so abused his position as to render his continuance in office detrimental to the public interest.

(2) The Chairperson or a Member shall not be removed under clause (b), clause (d) or clause (e) of sub-section (1) unless he has been given a reasonable opportunity of being heard.

* 16. The Chairperson or a Member on ceasing to hold office for any reason, shall not, without previous approval of the Central Government,—

(a) accept any employment in, or be connected with the management of any organisation, company or any other entity which has been associated with any work done or contracted out by the Authority, whether directly or indirectly, during his tenure as Chairperson or Member, as the case may be, for a period of three years from the date on which he ceases to hold office:

Provided that nothing contained in this clause shall apply to any employment under the Central Government or a State Government or local authority or in any statutory authority or any corporation established by or under any Central, State or provincial Act or a Government Company, as defined in clause (45) of section 2 of the Companies Act, 2013;

(b) act, for or on behalf of any person or organisation in connection with any specific proceeding or transaction or negotiation or a case to which the Authority is a party and with respect to which the Chairperson or such Member had, before cessation of office, acted for or provided advice to, the Authority;

(c) give advice to any person using information which was obtained in his capacity as the Chairperson or a Member and being unavailable to or not being able to be made available to the public; or

(d) enter, for a period of three years from his last day in office, into a contract of service with, accept an appointment to a board of directors of, or accept an offer of employment with, an entity with which he had direct and significant official dealings during his term of office.

17. The Chairperson shall preside over the meetings of the Authority, and without prejudice to any provision of this Act, exercise and discharge such other powers and functions of the Authority as may be prescribed.

18. (1) There shall be a chief executive officer of the Authority, not below the rank of Additional Secretary to the Government of India, to be appointed by the Central Government.

(2) The chief executive officer shall be the legal representative of the Authority and shall be responsible for—

(a) the day-to-day administration of the Authority;

(b) implementing the work programmes and decisions adopted by the Authority;

(c) drawing up of proposal for the Authority's decisions and work programmes;

(d) the preparation of the statement of revenue and expenditure and the execution of the budget of the Authority; and

(e) performing such other functions, or exercising such other powers, as may be specified by regulations.

(3) Every year, the chief executive officer shall submit to the Authority for approval—

(a) a general report covering all the activities of the Authority in the previous year;

(b) programmes of work;

(c) the annual accounts for the previous year; and

(d) the budget for the coming year.

(4) The chief executive officer shall have administrative control over the officers and other employees of the Authority.

19. (1) The Authority shall meet at such times and places and shall observe such rules of procedure in regard to the transaction of business at its meetings, including quorum at such meetings, as may be specified by regulations.

(2) The Chairperson, or, if for any reason, he is unable to attend a meeting of the Authority, the senior most Member shall preside over the meetings of the Authority.

(3) All questions which come up before any meeting of the Authority shall be decided by a majority of votes by the Members present and voting and in the event of an equality of votes, the Chairperson or in his absence the presiding Member shall have a casting vote.

(4) All decisions of the Authority shall be signed by the Chairperson or any other Member or the Member-Secretary authorised by the Authority in this behalf.

(5) If any Member, who is a director of a company and who as such director, has any direct or indirect pecuniary interest in any manner coming up for consideration at a meeting of the Authority, he shall, as soon as possible after relevant circumstances have come to his knowledge, disclose the nature of his interest at such meeting and such disclosure shall be recorded in the proceedings of the Authority, and the Member shall not take part in any deliberation or decision of the Authority with respect to that matter.

20. No act or proceeding of the Authority shall be invalid merely by reason of—

(a) any vacancy in, or any defect in the constitution of, the Authority;

(b) any defect in the appointment of a person as Chairperson or Member of the Authority; or

(c) any irregularity in the procedure of the Authority not affecting the merits of the case.

21. (1) The Authority may, with the approval of the Central Government, determine the number, nature and categories of other officers and employees required by the Authority in the discharge of its functions.

(2) The salaries and allowances payable to, and the other terms and conditions of service of, the chief executive officer and other officers and other employees of the Authority shall be such as may be specified by regulations with the approval of the Central Government.

22. On and from the establishment of the Authority—

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(a) all the assets and liabilities of the Unique Identification Authority of India, established vide notification of the Government of India in the Planning Commission number A-43011/02/2009-Admin. I, dated the 28th January, 2009, shall stand transferred to, and vested in, the Authority.

Explanation.—The assets of such Unique Identification Authority of India shall be deemed to include all rights and powers, and all properties, whether movable or immovable, including, in particular, cash balances, deposits and all other interests and rights in, or arising out of, such properties as may be in the possession of such Unique Identification Authority of India and all books of account and other documents relating to the same; and liabilities shall be deemed to include all debts, liabilities and obligations of whatever kind;

(b) without prejudice to the provisions of clause (a), all data and information collected during enrolment, all details of authentication performed, debts, obligations and liabilities incurred, all contracts entered into and all matters and things engaged to be done by, with or for such Unique Identification Authority of India immediately before that day, for or in connection with the purpose of the said Unique Identification Authority of India, shall be deemed to have been incurred, entered into or engaged to be done by, with or for, the Authority;

(c) all sums of money due to the said Unique Identification Authority of India immediately before that day shall be deemed to be due to the Authority; and

(d) all suits and other legal proceedings instituted or which could have been instituted by or against such Unique Identification Authority of India immediately before that day may be continued or may be instituted by or against the Authority.

23. (1) The Authority shall develop the policy, procedure and systems for issuing Aadhaar numbers to individuals and perform authentication thereof under this Act.

(2) Without prejudice to sub-section (1), the powers and functions of the Authority, inter alia, include—

(a) specifying, by regulations, demographic information and biometric information required for enrolment and the processes for collection and verification thereof;

(b) collecting demographic information and biometric information from any individual seeking an Aadhaar number in such manner as may be specified by regulations;

(c) appointing of one or more entities to operate the Central Identities Data Repository;

(d) generating and assigning Aadhaar numbers to individuals;

(e) performing authentication of Aadhaar numbers;

(f) maintaining and updating the information of individuals in the Central Identities Data Repository in such manner as may be specified by regulations;

(g) omitting and deactivating of an Aadhaar number and information relating thereto in such manner as may be specified by regulations;

(h) specifying the manner of use of Aadhaar numbers for the purposes of providing or availing of various subsidies, benefits, services and other purposes for which Aadhaar numbers may be used;

(i) specifying, by regulations, the terms and conditions for appointment of Registrars, enrolling agencies and service providers and revocation of appointments thereof;

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(j) establishing, operating and maintaining of the Central Identities Data Repository;

(k) sharing, in such manner as may be specified by regulations, the information of Aadhaar number holders, subject to the provisions of this Act;

(l) calling for information and records, conducting inspections, inquiries and audit of the operations for the purposes of this Act of the Central Identities Data Repository, Registrars, enrolling agencies and other agencies appointed under this Act;

(m) specifying, by regulations, various processes relating to data management, security protocols and other technology safeguards under this Act;

(n) specifying, by regulations, the conditions and procedures for issuance of new Aadhaar number to existing Aadhaar number holder;

(o) levying and collecting the fees or authorising the Registrars, enrolling agencies or other service providers to collect such fees for the services provided by them under this Act in such manner as may be specified by regulations;

(p) appointing such committees as may be necessary to assist the Authority in discharge of its functions for the purposes of this Act;

(q) promoting research and development for advancement in biometrics and related areas, including usage of Aadhaar numbers through appropriate mechanisms;

(r) evolving of, and specifying, by regulations, policies and practices for Registrars, enrolling agencies and other service providers;

(s) setting up facilitation centres and grievance redressal mechanism for redressal of grievances of individuals, Registrars, enrolling agencies and other service providers;

(t) such other powers and functions as may be prescribed.

(3) The Authority may,—

(a) enter into Memorandum of Understanding or agreement, as the case may be, with the Central Government or State Governments or Union territories or other agencies for the purpose of performing any of the functions in relation to collecting, storing, securing or processing of information or delivery of Aadhaar numbers to individuals or performing authentication;

(b) by notification, appoint such number of Registrars, engage and authorise such agencies to collect, store, secure, process information or do authentication or perform such other functions in relation thereto;

as may be necessary for the purposes of this Act.

(4) The Authority may engage such consultants, advisors and other persons as may be required for efficient discharge of its functions under this Act on such allowances or remuneration and terms and conditions as may be specified by contract.

CHAPTER V GRANTS, ACCOUNTS AND AUDIT AND ANNUAL REPORT

24. The Central Government may, after due appropriation made by Parliament by law in this behalf, make to the Authority, grants of such sums of money as the Central Government may think fit for being utilised for the purposes of this Act.

25. The fees or revenue collected by the Authority shall be credited to the Consolidated Fund of India.

26. (1) The Authority shall maintain proper accounts and other relevant records and prepare an annual statement of accounts in such form as may be prescribed by the Central Government in consultation with the Comptroller and Auditor-General of India.

(2) The accounts of the Authority shall be audited annually by the Comptroller and Auditor-General of India at such intervals as may be specified by him and any expenditure incurred in connection with such audit shall be payable by the Authority to the Comptroller and Auditor-General.

(3) The Comptroller and Auditor-General of India and any person appointed by him in connection with the audit the accounts of the Authority under this Act shall have the same rights and privileges and authority in connection with such audit as the Comptroller and Auditor-General generally has in connection with the audit of Government accounts, and in particular, shall have the right to demand production of books, accounts, connected vouchers and other documents and papers, and to inspect any of the offices of the Authority.

(4) The accounts of the Authority, as certified by the Comptroller and Auditor-General of India or any other person appointed by him in this behalf, together with the audit report thereon shall be forwarded annually to the Central Government by the Authority and the Central Government shall cause the audit report to be laid, as soon as may be after it is received, before each House of Parliament.

27. (1) The Authority shall furnish to the Central Government at such time and in such form and manner as may be prescribed or as the Central Government may direct, such returns and statements and particulars in regard to any matter under the jurisdiction of the Authority, as the Central Government may from time to time require.

(2) The Authority shall prepare, once in every year, and in such form and manner and at such time as may be prescribed, an annual report giving—

(a) a description of all the activities of the Authority for the previous years;

(b) the annual accounts for the previous year; and

(c) the programmes of work for coming year.

(3) A copy of the report received under sub-section (2) shall be laid by the Central Government, as soon as may be after it is received, before each House of Parliament.

CHAPTER VI PROTECTION OF INFORMATION 28.

(1) The Authority shall ensure the security of identity information and authentication records of individuals.

(2) Subject to the provisions of this Act, the Authority shall ensure confidentiality of identity information and authentication records of individuals.

(3) The Authority shall take all necessary measures to ensure that the information in the possession or control of the Authority, including information stored in the Central Identities Data Repository, is secured and protected against access, use or disclosure not permitted under this Act or regulations made thereunder, and against accidental or intentional destruction, loss or damage.

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(4) Without prejudice to sub-sections (1) and (2), the Authority shall—

(a) adopt and implement appropriate technical and organisational security measures;

(b) ensure that the agencies, consultants, advisors or other persons appointed or engaged for performing any function of the Authority under this Act, have in place appropriate technical and organisational security measures for the information; and

(c) ensure that the agreements or arrangements entered into with such agencies, consultants, advisors or other persons, impose obligations equivalent to those imposed on the Authority under this Act, and require such agencies, consultants, advisors and other persons to act only on instructions from the Authority.

(5) Notwithstanding anything contained in any other law for the time being in force, and save as otherwise provided in this Act, the Authority or any of its officers or other employees or any agency that maintains the Central Identities Data Repository shall not, whether during his service or thereafter, reveal any information stored in the Central Identities Data Repository or authentication record to anyone:

Provided that an Aadhaar number holder may request the Authority to provide access to his identity information, excluding his core biometric information in such manner as may be specified by regulations.

29. (1) No core biometric information, collected or created under this Act, shall be—

(a) shared with anyone for any reason whatsoever; or

(b) used for any purpose other than generation of Aadhaar numbers and authentication under this Act.

(2) The identity information, other than core biometric information, collected or created under this Act may be shared only in accordance with the provisions of this Act and in such manner as may be specified by regulations.

(3) No identity information available with a requesting entity shall be—

(a) used for any purpose, other than that specified to the individual at the time of submitting any identity information for authentication; or

(b) disclosed further, except with the prior consent of the individual to whom such information relates.

(4) No Aadhaar number or core biometric information collected or created under this Act in respect of an Aadhaar number holder shall be published, displayed or posted publicly, except for the purposes as may be specified by regulations.

30. The biometric information collected and stored in electronic form, in accordance with this Act and regulations made thereunder, shall be deemed to be "electronic record" and "sensitive personal data or information", and the provisions contained in the Information Technology Act, 2000 and the rules made thereunder shall apply to such information, in addition to, and to the extent not in derogation of the provisions of this Act.

Explanation.— For the purposes of this section, the expressions—

(a) "electronic form" shall have the same meaning as assigned to it in clause (r) of sub-section (1) of section 2 of the Information Technology Act, 2000;

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(b) "electronic record" shall have the same meaning as assigned to it in clause (t) of sub-section (1) of section 2 of the Information Technology Act, 2000;

(c) "sensitive personal data or information" shall have the same meaning as assigned to it in clause (iii) of the Explanation to section 43A of the Information Technology Act, 2000.

31. (1) In case any demographic information of an Aadhaar number holder is found incorrect or changes subsequently, the Aadhaar number holder shall request the Authority to alter such demographic information in his record in the Central Identities Data Repository in such manner as may be specified by regulations.

(2) In case any biometric information of Aadhaar number holder is lost or changes subsequently for any reason, the Aadhaar number holder shall request the Authority to make necessary alteration in his record in the Central Identities Data Repository in such manner as may be specified by regulations.

(3) On receipt of any request under sub-section (1) or sub-section (2), the Authority may, if it is satisfied, make such alteration as may be required in the record relating to such Aadhaar number holder and intimate such alteration to the concerned Aadhaar number holder.

(4) No identity information in the Central Identities Data Repository shall be altered except in the manner provided in this Act or regulations made in this behalf.

32. (1) The Authority shall maintain authentication records in such manner and for such period as may be specified by regulations.

(2) Every Aadhaar number holder shall be entitled to obtain his authentication record in such manner as may be specified by regulations.

(3) The Authority shall not, either by itself or through any entity under its control, collect, keep or maintain any information about the purpose of authentication.

33. (1) Nothing contained in sub-section (2) or sub-section (5) of section 28 or sub-section (2) of section 29 shall apply in respect of any disclosure of information, including identity information or authentication records, made pursuant to an order of a court not inferior to that of a District Judge:

Provided that no order by the court under this sub-section shall be made without giving an opportunity of hearing to the Authority.

(2) Nothing contained in sub-section (2) or sub-section (5) of section 28 and clause (b) of sub-section (1), sub-section (2) or sub-section (3) of section 29 shall apply in respect of any disclosure of information, including identity information or authentication records, made in the interest of national security in pursuance of a direction of an officer not below the rank of Joint Secretary to the Government of India specially authorised in this behalf by an order of the Central Government:

Provided that every direction issued under this sub-section, shall be reviewed by an Oversight Committee consisting of the Cabinet Secretary and the Secretaries to the Government of India in the Department of Legal Affairs and the Department of Electronics and Information Technology, before it takes effect:

Provided further that any direction issued under this sub-section shall be valid for a period of three months from the date of its issue, which may be extended for a further period of three months after the review by the Oversight Committee.

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CHAPTER VII
OFFENCES AND PENALTIES

34. Whoever impersonates or attempts to impersonate another person, whether dead or alive, real or imaginary, by providing any false demographic information or biometric information, shall be punishable with imprisonment for a term which may extend to three years or with a fine which may extend to ten thousand rupees or with both.

35. Whoever, with the intention of causing harm or mischief to an Aadhaar number holder, or with the intention of appropriating the identity of an Aadhaar number holder changes or attempts to change any demographic information or biometric information of an Aadhaar number holder by impersonating or attempting to impersonate another person, dead or alive, real or imaginary, shall be punishable with imprisonment for a term which may extend to three years and shall also be liable to a fine which may extend to ten thousand rupees.

36. Whoever, not being authorised to collect identity information under the provisions of this Act, by words, conduct or demeanour pretends that he is authorised to do so, shall be punishable with imprisonment for a term which may extend to three years or with a fine which may extend to ten thousand rupees or, in the case of a company, with a fine which may extend to one lakh rupees or with both.

37. Whoever, intentionally discloses, transmits, copies or otherwise disseminates any identity information collected in the course of enrolment or authentication to any person not authorised under this Act or regulations made thereunder or in contravention of any agreement or arrangement entered into pursuant to the provisions of this Act, shall be punishable with imprisonment for a term which may extend to three years or with a fine which may extend to ten thousand rupees or, in the case of a company, with a fine which may extend to one lakh rupees or with both.

38. Whoever, not being authorised by the Authority, intentionally,—

- (a) accesses or secures access to the Central Identities Data Repository;
- (b) downloads, copies or extracts any data from the Central Identities Data Repository or stored in any removable storage medium;
- (c) introduces or causes to be introduced any virus or other computer contaminant in the Central Identities Data Repository;
- (d) damages or causes to be damaged the data in the Central Identities Data Repository;
- (e) disrupts or causes disruption of the access to the Central
- (g) reveals any information in contravention of sub-section (5) of section 28, or shares, uses or displays information in contravention of section 29 or assists any person in any of the aforementioned acts;
- (h) destroys, deletes or alters any information stored in any removable storage media or in the Central Identities Data Repository or diminishes its value or utility or affects it injuriously by any means; or
- (i) steals, conceals, destroys or alters or causes any person to steal, conceal, destroy or alter any computer source code used by the Authority with an intention to cause damage,

shall be punishable with imprisonment for a term which may extend to three years and shall also be liable to a fine which shall not be less than ten lakh rupees.

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Explanation.—For the purposes of this section, the expressions "computer contaminant", "computer virus" and "damage" shall have the meanings respectively assigned to them in the Explanation to section 43 of the Information Technology Act, 2000, and the expression "computer source code" shall have the meaning assigned to it in the Explanation to section 65 of the said Act.

39. Whoever, not being authorised by the Authority, uses or tampers with the data in the Central Identities Data Repository or in any removable storage medium with the intent of modifying information relating to Aadhaar number holder or discovering any information thereof, shall be punishable with imprisonment for a term which may extend to three years and shall also be liable to a fine which may extend to ten thousand rupees.

40. Whoever, being a requesting entity, uses the identity information of an individual in contravention of sub-section (3) of section 8, shall be punishable with imprisonment which may extend to three years or with a fine which may extend to ten thousand rupees or, in the case of a company, with a fine which may extend to one lakh rupees or with both.

41. Whoever, being an enrolling agency or a requesting entity, fails to comply with the requirements of sub-section (2) of section 3 or sub-section (3) of section 8, shall be punishable with imprisonment which may extend to one year or with a fine which may extend to ten thousand rupees or, in the case of a company, with a fine which may extend to one lakh rupees or with both.

42. Whoever commits an offence under this Act or any rules or regulations made thereunder for which no specific penalty is provided elsewhere than this section, shall be punishable with imprisonment for a term which may extend to one year or with a fine which may extend to twenty-five thousand rupees or, in the case of a company, with a fine which may extend to one lakh rupees, or with both.

43. (1) Where an offence under this Act has been committed by a company, every person who at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where any offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purposes of this section—

(a) "company" means any body corporate and includes a firm or other association of individuals; and

(b) "director", in relation to a firm, means a partner in the firm.

44. (1) Subject to the provisions of sub-section (2), the provisions of this Act shall apply also to any offence or contravention committed outside India by any person, irrespective of his nationality.

(2) For the purposes of sub-section (1), the provisions of this Act shall apply to any offence or contravention committed outside India by any person, if the act or conduct constituting the offence or contravention involves any data in the Central Identities Data Repository.

45. Notwithstanding anything contained in the Code of Criminal Procedure, 1973, a police officer not below the rank of Inspector of Police shall investigate any offence under this Act.

46. No penalty imposed under this Act shall prevent the imposition of any other penalty or punishment under any other law for the time being in force.

47. (1) No court shall take cognizance of any offence punishable under this Act, save on a complaint made by the Authority or any officer or person authorised by it.

(2) No court inferior to that of a Chief Metropolitan Magistrate or a Chief Judicial Magistrate shall try any offence punishable under this Act.

CHAPTER VIII MISCELLANEOUS

48. (1) If, at any time, the Central Government is of the opinion,—

(a) that, on account of circumstances beyond the control of the Authority, it is unable to discharge the functions or perform the duties imposed on it by or under the provisions of this Act; or

(b) that the Authority has persistently defaulted in complying with any direction given by the Central Government under this Act or in the discharge of the functions or performance of the duties imposed on it by or under the provisions of this Act and as a result of such default the financial position of the Authority or the administration of the Authority has suffered; or

(c) that a public emergency exists,

the Central Government may, by notification, supersede the Authority for such period, not exceeding six months, as may be specified in the notification and appoint a person or persons as the President may direct to exercise powers and discharge functions under this Act:

Provided that before issuing any such notification, the Central Government shall give a reasonable opportunity to the Authority to make representations against the proposed supersession and shall consider the representations, if any, of the Authority.

(2) Upon the publication of a notification under sub-section (1), superseding the Authority,—

(a) the Chairperson and other Members shall, as from the date of supersession, vacate their offices as such;

(b) all the powers, functions and duties which may, by or under the provisions of this Act, be exercised or discharged by or on behalf of the Authority shall, until the Authority is reconstituted under sub-section (3), be exercised and discharged by the person or persons referred to in sub-section (1); and

(c) all properties owned or controlled by the Authority shall, until the Authority is reconstituted under sub-section (3), vest in the Central Government.

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(3) On or before the expiration of the period of supersession specified in the notification issued under sub-section (1), the Central Government shall reconstitute the Authority by a fresh appointment of its Chairperson and other Members and in such case any person who had vacated his office under clause (a) of sub-section (2) shall not be deemed to be disqualified for reappointment.

(4) The Central Government shall cause a copy of the notification issued under sub-section (1) and a full report of any action taken under this section and the circumstances leading to such action to be laid before each House of Parliament at the earliest.

49. The Chairperson, Members, officers and other employees of the Authority shall be deemed, while acting or purporting to act in pursuance of any of the provisions of this Act, to be public servants within the meaning of section 21 of the Indian Penal Code.

50. (1) Without prejudice to the foregoing provisions of this Act, the Authority shall, in exercise of its powers or the performance of its functions under this Act be bound by such directions on questions of policy, as the Central Government may give, in writing to it, from time to time:

Provided that the Authority shall, as far as practicable, be given an opportunity to express its views before any direction is given under this sub-section:

Provided further that nothing in this section shall empower the Central Government to issue directions pertaining to technical or administrative matters undertaken by the Authority.

(2) The decision of the Central Government, whether a question is one of policy or not, shall be final.

51. The Authority may, by general or special order in writing, delegate to any Member, officer of the Authority or any other person, subject to such conditions, if any, as may be specified in the order, such of its powers and functions under this Act (except the power under section 54) as it may deem necessary.

52. No suit, prosecution or other legal proceeding shall lie against the Central Government or the Authority or the Chairperson or any Member or any officer, or other employees of the Authority for anything which is in good faith done or intended to be done under this Act or the rule or regulation made thereunder.

53. (1) The Central Government may, by notification, make rules to carry out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the form and manner in which and the authority before whom the oath of office and of secrecy is to be subscribed by the Chairperson and Members under sub-section (2) of section 14;

(b) the salary and allowances payable to, and other terms and conditions of service of, the Chairperson and the allowances or remuneration payable to Members of the Authority under sub-section (4) of section 14;

(c) the other powers and functions of the Chairperson of the Authority under section 17;